

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 OMNIBUS RESPONSE TO DEFENDANT’S
PRO SE MOTIONS REGARDING ATTORNEY CHARLES FREEMAN**

The United States respectfully states the following regarding defendant’s requests for the participation of Charles Freeman during the Rule 15 deposition scheduled for June 24, 2002, and the re-arraignment scheduled for June 25, 2002:

On June 13, 2002, defendant invoked his Faretta right to self-representation and affirmed under oath to the Court that he wished to represent himself. During the same hearing, defendant stated that intended to have an unnamed attorney (since identified as Texas attorney Charles Freeman) help with procedural issues. At that time, defendant represented that Mr. Freeman would represent him *pro bono*. The Court entered an order on June 17, 2002, giving defendant until June 28, 2002, to have Mr. Freeman to enter his appearance or the Court would appoint another standby counsel to replace the Federal Public Defender.¹

Mr. Freeman has yet to enter his appearance. Moreover, even if Mr. Freeman does move to enter this case, he will still need to pass a FBI background check before his representation of defendant. See Special Administrative Measures at § 2. Indeed, unless Mr. Freeman becomes

¹By order dated June 17, 2002, the Court appointed Alan Yamamoto to replace Edward MacMahon as stand-by counsel.

defendant's attorney, he may not have any further visits with defendant. See Special Administrative Measures at § 4(b)(i) ("The inmate shall be permitted to visit only with his immediate family members.").

Despite Mr. Freeman's failure to enter his appearance, defendant asks the Court to allow Mr. Freeman to accompany him during a Rule 15 deposition scheduled for June 24, 2002, and during the re-arraignment on June 25, 2002. Additionally, defendant has filed two motions which were apparently written with the assistance of Mr. Freeman. See Defendant's Motions entitled "Give Me Reasonable Time to Prepare and File Motions" and "Stop Undermining My Constitutional Right to Represent Myself."² For the following reasons, the Court should deny defendant's requests to have Mr. Freeman represent him, or to act on his behalf, and should admonish Mr. Freeman not to file pleadings on defendant's behalf until Mr. Freeman properly enters his appearance, if he intends to do so.

The right to self-representation recognized in Faretta v. California, 422 U.S. 806 (1975), "does not exist ... to be used as a tactic for delay, for disruption, for distortion of the system, or for manipulation of the trial process." United States v. Frazier-El, 204 F.3d 553, 560 (4th Cir. 2000) (internal citations omitted). "The Sixth Amendment does not require a court to grant advisory counsel to a criminal defendant who chooses to exercise his right to self-representation by proceeding *pro se*. Thus, the district court, in keeping with its broad supervisory powers, has equally broad discretion to guide what, if any, assistance standby, or advisory, counsel may provide to a defendant conducting his own defense." United States v. Lawrence, 161 F.3d 250,

²It is unclear from the signature lines for both the motions and the certificates of service as to whether Mr. Freeman, defendant or both signed the pleadings.

253 (4th Cir. 1998).³ Moreover, the Fourth Circuit made clear in United States v. Singleton, 107 F.3d 1091, 1100-01 (4th Cir. 1997), that the defendant does not have the right to “hybrid” counsel, i.e., having an attorney advisor. Here, defendant seeks to go even farther by having an attorney who has not entered his appearance represent him, which is the equivalent of having an unlicensed attorney appear with him. Of course, defendant has no right to unlicensed counsel representing him. See United States v. Taylor, 569 F.2d 448, 451 (7th Cir. 1978); United States v. Grismore, 546 F.2d 844, 847 (10th Cir. 1976); United States v. Whitesel, 543 F.2d 1176, 1177-81 (6th Cir. 1976); United States v. Kelley, 539 F.2d 1199, 1201-03 (9th Cir. 1976).

Defendant’s requests regarding Mr. Freeman, if granted, would also violate multiple subsections of Local Rule 83.1 of the Eastern District of Virginia. Subsection (D) requires Foreign Attorneys, such as Mr. Freeman, to file a motion seeking to practice *pro hac vice* before this Court that includes, among other requirements, a certification that counsel has reviewed the Local Rules of this Court and an identification of local counsel, who is a member of the bar of this Court. Subsection (F) states:

³ Of course, as noted in the Government’s Memorandum of law regarding defendant’s request to proceed *pro se*, the Court has broad discretion to appoint standby counsel, even over the defendant’s objection. See Faretta 422 U.S. at 853 n. 46; McKaskle v. Wiggins, 465 U.S. 168, 184 (1984). Moreover, the defendant has no colorable constitutional claim to his choice of counsel and cannot therefore reject the appointment of particular counsel. See Caplin & Drysdale v. United States, 491 U.S. 617, 624 (1989). ([T]hose who do not have the means to hire their own lawyers have no cognizable complaint so long as they are adequately represented by attorneys appointed by the courts.”). Thus, for example, there is no constitutional injury when the choice of appointed counsel is denied based on reasonable rules requiring appointment of local counsel, see Ford v. Israel, 701 F.2d 689, 692-93, (7th Cir. 1983), or a court requirement that defense counsel obtain a security clearance, see United States v. Bin Laden, 58 F.Supp. 2d 113, 119-21 (S.D.N.Y. 1999).

Attorneys Filing Pleadings: Any counsel presenting papers, suits or pleadings for filing, or making an appearance, must be members of the bar of this Court, or must have counsel who are members of the bar of this Court to join in the pleading by endorsement. Any counsel who joins in a pleading, motion, or other paper filed with the Court will be held accountable for the case by the Court. At least one person admitted to practice under subsection (C) of this Rule must personally be present at all hearings, pretrials, and trials. This obligation may not be avoided or delegated without leave of the Court.

Subsection (H) further provides in relevant parts as follows:

Practicing Before Admission or While Disbarred or Suspended: Any person who, before admission to the bar of this Court . . . exercises any of the privileges of a member of the bar of this Court, or who pretends to be entitled so to do, shall be guilty of contempt of court and subject to appropriate punishment therefor.

This rule serves to ensure accountability by an attorney to the Court and its rules during litigation. This is particularly necessary in a case, such as this prosecution, that implicates national security issues. By preparing pleadings for defendant prior to properly entering his appearance, Mr. Freeman may already have violated subsection (H).

While defendant certainly has the right to self-representation, he does not have the right to dictate the terms of the representation. Like any other defendant, he (and any attorney who elects to represent him) must follow the rules of this Court. Until Mr. Freeman properly enters his appearance in this case in accord with the Local Rules of this Court, he should be precluded

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 regular mail and facsimile to defense counsel

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/s/
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