

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)
 a/k/a "Shaqil,")
 a/k/a "Abu Khalid)
 al Sahrawi,")
)
 Defendant.)

ORDER

Defendant, pro se, has filed numerous motions for discovery. In his Emergency Motion for Immediate Release from Detention and the Dropping of All Charge [sic] Against Zacarias Moussaoui (Docket #185)¹ the defendant requests production of the belongings seized from him when he was arrested on August 16, 2001, access to the telephone conversation between Al Attas and an Imam at the Sherburne County Jail, and the August 18, 2001 INS deportation order. The same request for access to items seized from him when he was arrested is repeated in his motion docketed as #259. The same request for a copy of the transcript of the conversation between Al Attas and the Imam is repeated in his motions docketed as #s 258, 280 and 295.

The United States responds that the defendant's discovery

¹ Because the defendant's handwritten pleadings are often difficult to read, we initially understood this pleading to be a motion to suppress. After the defendant advised us of our error, on June 24, 2002, we issued an order of clarification, treating the motion as requesting discovery (Docket #226).

requests are moot because it has already produced to standby defense counsel photographs or copies of the requested property seized from the defendant and the INS deportation order in electronic format. It also states that the transcript of the telephone conversation between Al Attas and the Imam is presently classified as Secret; and, therefore, only standby counsel are authorized to have access.²

The Court finds that the physical evidence seized from the defendant on August 16, 2002 and the INS deportation order are "material to the preparation of the...defense." Fed. R. Civ. P. 16(a)(1)(C). Therefore, defendant's motions docketed as #s 185 and 259 are GRANTED as to these two requests. Furthermore, given the volume of evidence produced in electronic format, the defendant's refusal to communicate with standby counsel, and his lack of a printer,³ the Court finds that the United States' position that this evidence has already been produced to standby counsel in electronic format is inadequate. Therefore, it is hereby

ORDERED that, unless standby counsel have already done so, the United States produce to the defendant forthwith hard copies of the items seized from the defendant when he was arrested and

²The United States represents that it will produce a copy of the transcript to the defendant if it is declassified.

³ Defendant's access to a printer has been authorized, but a compatible device has not yet been hooked up to his computer.

the INS deportation order.

Because the transcript of the telephone conversation between Al Attas and the Imam is currently classified as Secret and cannot be turned over to defendant unless it is declassified, the defendant's motions docketed as #s 185, 258, 280 and 295 are DENIED as to his request for a copy of the transcript; and it is hereby

ORDERED that the United States immediately advise the Court of any change in the classification status of the transcript.

The defendant has also filed a Motion to Have an Independent Forensic Examination (Investigation) of My Belongings for Presence of Electronic Surveillance Device Such as Tracking and Listening Bugs (Docket #234), in which he asks to have his belongings examined by an independent forensic expert in the field of electronic surveillance.⁴ He reiterates this request in his motions docketed as #s 259, 272 and 295, which include requests to inspect and have examined by a forensic expert in the field of electronic surveillance the defendant's Ford Taurus; Al Attas' Subaru; and all items seized from Al Attas' Norman, Oklahoma apartment, including a square, white fan allegedly left on Mr. Moussaoui's car "like a present."

As to the defendant's request for expert forensic examinations of his belongings, the United States does not

⁴ In this motion, the defendant does not specify which belongings he seeks to have examined.

object, and has offered to make the evidence available to the defendant for his personal inspection at the Alexandria City Adult Detention Center and for an expert's evaluation. However, the United States has not advised the Court whether it seized the defendant's Ford Taurus; Al Attas' Subaru; or any items from Al Attas' Norman, Oklahoma apartment, including a square, white fan; and, if so, whether it objects to making this property available for inspection and examination.

Because we find the defendant's requests to be reasonable, his motions docketed as #s 185, 234, 259, 272 and 295 are GRANTED in part as to the property seized from Mr. Moussaoui when he was arrested, and DEFERRED as to the other requests; and it is hereby

ORDERED that the United States make items seized from the defendant on August 16, 2001 available for inspection and examination to the defendant and/or his expert; and it is further

ORDERED that the United States advise the Court forthwith whether it seized the defendant's Ford Taurus or any items therefrom; Al Attas' Subaru or any items therefrom; and/or any items from Al Attas' Norman, Oklahoma address, including a fan; and, if so, whether it objects to producing these items for expert examination.

In another discovery motion, entitled Motion to See What the Scam is About (Docket #286), the defendant requests a photocopy of the German portion of the Western Union money transfer filled

out by an Ahad Sabet (see Superseding Indictment ("SI"), Overt Act #66) and Ramzi Bin al-Shibh's application for a United States Visa; and also requests the assistance of a forensic expert (we assume a handwriting expert) to compare the Sabet and al-Shibh signatures.⁵ Although the United States has alleged that Ahad Sabet is an alias for Ramzi Bin al-Shibh, the defendant maintains that they are two different people and argues that the requested evidence will assist him in proving that fact.

The United States does not oppose the defendant's request for a forensic handwriting examination of the wire transfer and Visa applications. However, the United States indicates that all requested documents have already been produced to standby counsel in electronic format.

Finding the defendant's requests to be reasonable, his motion is GRANTED. However, for the reasons discussed above, we find the United States' electronic production to be inadequate. Therefore, it is hereby

ORDERED that the United States produce legible photocopies of the requested materials to defendant forthwith.

An indigent defendant is entitled to appropriate expert services under the Criminal Justice Act, 18 U.S.C. §§ 3005,

⁵ Because the Superseding Indictment alleges that Ramzi Bin al-Shibh applied several times for a United States Visa, specifically on May 17, June 15, September 15, and October 25, 2000 (see SI, Overt Act #s 25, 26, 29 and 30, respectively), we assume that the defendant's request applies to all four applications.

3006A(e)(1). Ordinarily, appointed counsel would retain such expert services. However, the defendant has vehemently refused to consult with his standby counsel. Therefore, it is hereby

ORDERED that standby counsel provide the defendant, by letter, with the names and credentials of proposed forensic experts in the fields of electronic surveillance and handwriting. The defendant should then advise the Court as to which expert in each field he wants to use, and we will appoint those experts. Any such court-appointed expert must be allowed to meet with the defendant under the same conditions as an attorney.

The Clerk is directed to forward copies of this Order to defendant, pro se; counsel for the United States; standby defense counsel; the Court Security Officer; and the United States Marshal.

Entered this 11th day of July, 2002.

/s/

Leonie M. Brinkema
United States District Judge

Alexandria, Virginia