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,	)	
Defendant	)	

GOVERNMENT'S OPPOSITION TO STANDBY COUNSEL'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS GOVERNMENT'S NOTICE OF INTENT TO SEEK A SENTENCE OF DEATH

The United States respectfully submits this Memorandum in response to standby counsel's Supplemental Memorandum in Support of Motion to Dismiss Government's Notice of Intent to Seek a Sentence of Death because the Federal Death Penalty Act does not offend the Indictment Clause of the Fifth Amendment. Moreover, the superseding indictment fulfills any requirements mandated by the Indictment Clause regarding the death penalty in this case. Therefore, standby counsel's motion must be denied.

I. INTRODUCTION

On July 16, 2002, a grand jury returned a second superseding indictment that included a Notice of Special Findings alleging the following:

> a. The allegations of Counts One, Two, Three, and Four of this Indictment are hereby realleged as if fully set forth herein and incorporated by reference.
>
> b. As to Counts One, Two, Three, and Four of this Indictment, the defendant ZACARIAS MOUSSAOUI:
>
> > (1) was more than 18 years of age at the time of the offense. (Title 18, United States Code, Section 3591(a));

(2) participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victims died as a direct result of the act. (Title 18, United States Code, Section 3591(a)(2)(C));

(3) intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victims died as a direct result of the act. (Title 18, United States Code, Section 3591(a)(2)(D));

(4) in committing the offenses described in Counts One, Two, Three, and Four, knowingly created a grave risk of death to one or more persons in addition to the victims of the offense. (Title 18, United States Code, Section 3592(c)(5));

(5) committed the offenses described in Counts One, Two, Three, and Four in an especially heinous, cruel, and depraved manner in that they involved torture and serious physical abuse to the victims. (Title 18, United States Code, Section 3592(c)(6)); and,

(6) committed the offenses described in Counts One, Two, Three, and Four after substantial planning and premeditation to cause the death of a person and commit an act of terrorism. (Title 18, United States Code, Section 3592(c)(9)).

(Pursuant to Title 18, United States Code, Sections 3591 and 3592).

These findings track the threshold findings and statutory aggravating factors alleged in the Government's Notice of Intent to Seek a Sentence of Death.

II. THE TEACHINGS OF RING, HARRIS, AND JONES

Standby counsel assert in their Supplemental Memorandum that the Government sought this superseding indictment because it believes that the Federal Death Penalty Act (FDPA) is unconstitutional in light of the Supreme Court's recent decision in Ring v. Arizona, 122 S. Ct. 2428 (2002). To the contrary, for the reasons discussed herein, the Government submits that the FDPA is

constitutional and the return of the superseding indictment eliminates any possible Fifth Amendment challenge to the death penalty in this case.

Analysis of this issue must begin with the Supreme Court's decision in Ring, because the Supreme Court did not declare the FDPA unconstitutional. Rather, in Ring, the Supreme Court held that the Arizona death penalty statute was unconstitutional because it provided that a judge alone could decide whether a defendant should be sentenced to death after making findings rendering the defendant eligible for the death penalty in violation of the Sixth Amendment right to trial by jury. Ring, 122 S. Ct. at 2432. The Court specifically held that "[c]apital defendant[s] . . . are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment." Id. Of course, the FDPA complies with Ring because the statute specifically provides for a jury to determine the aggravating factors, unless both the defendant and the Government agree otherwise. 18 U.S.C. § 3593(b).

Left unanswered by Ring is whether the Indictment Clause of the Fifth Amendment requires the Grand Jury to indict aggravating factors for a defendant to be eligible for the death penalty.[1] Because the Fifth Amendment right to grand jury indictment does not extend to state prosecutions, Hurtado v. California, 110 U.S. 516 (1884), the Court in Ring did not raise the issue of indictment, and it was not specifically addressed.[2] However, the Court's ruling that aggravating factors are viewed as elements of

[1]The Indictment Clause of the Fifth Amendment provides: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger . . . ."

[2]Indeed, in footnote 4, the Court noted that "Ring does not contend that his indictment was constitutionally defective." Ring, 122 S. Ct. at 2437 n. 4.

the offense, which require jury determination, suggests that the Court is likely to find that the Indictment Clause mandates submission of aggravating factors to the grand jury. See Ring, 122 S. Ct. at 2439 ("If a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact – no matter how the State labels it – must be found by a jury beyond a reasonable doubt."); id. at 2443 ("Because Arizona's enumerated aggravating factors operate as the 'functional equivalent of an element of a greater offense,' . . . the Sixth Amendment requires that they be found by a jury."); see also United States v. Cotton, 122 S. Ct. 1781, 1783 (May 20, 2002) (in federal prosecutions, any fact increasing the maximum punishment "must also be charged in the indictment.").

On the same day as the Ring decision, the Supreme Court also decided Harris v. United States, 122 S. Ct. 2406 (June 24, 2002), in which the Court reaffirmed its previous ruling in MacMillan v. Pennsylvania, 477 U.S. 79 (1986), deciding that mandatory minimum sentencing factors need not be alleged in the indictment, submitted to the jury, or proved beyond a reasonable doubt, as long as the factors do not increase the maximum possible sentence. Harris, 122 S. Ct. at 2420. At the same time, however, the Court made clear in Harris that a crime has not been properly alleged, "unless the indictment and the jury verdict include[s] all the facts to which the legislature [has] attached the maximum punishment." Id. at 2417. While discussing the significance of the Indictment Clause, the Court stated: "grand and petit juries . . . form a 'strong and two-fold barrier . . . between the liberties of the people and the prerogative of the [government].'" Id. at 2418 (quoting Duncan v. Louisiana, 391 U.S. 145, 151 (1968)). However, "[i]f the grand jury has alleged, and the trial jury has found, all the facts necessary to impose the maximum, the barriers between the government and defendant fall." Id. at 2419.

The decisions in Ring and Harris trace their pedigree to Jones v. United States, 526 U.S. 227 (1999).[3] In Jones, the Supreme Court held that, "under the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt." Jones, 526 U.S. at 243 n. 6. The reason for such a requirement is to ensure that safeguards exist as to "the formality of notice, the identity of the factfinder, and the burden of proof." Id.

The only court to address the application of the Indictment Clause to the FDPA has rejected the argument that aggravating factors set forth in the FDPA must be included in the indictment. In United States v. Allen, 247 F.3d 741, 761-64 (8th cir. 2001), the Eighth Circuit held that the rule in Apprendi did not require that aggravating factors and mental culpability factors be alleged in the indictment. The Eighth Circuit first held that the indictment at issue "sufficiently alleged a capital offense against Allen upon which he could be tried and, if convicted, could be sentenced to death," as each of the substantive capital offenses charged in that case facially authorized the death penalty for its violation. Id. at 762. Hence, the Eight Circuit concluded, "the Fifth Amendment's Indictment Clause [was] satisfied." Id. However, four days after Ring was decided, the Supreme Court vacated the Eighth Circuit's decision in Allen and remanded the case for further consideration in light of its decision in Ring, see Allen v. United States, __ S. Ct.__, 70 U.S.L.W. 3798, 2002 WL 1393602 (June 28, 2002),

[3]Apprendi v. New Jersey, 530 U.S. 466 (2000), follows in this progeny as well; however, like Ring, Apprendi did not implicate the Indictment Clause because it involved a state prosecution. See Apprendi, 530 U.S. at 477 n. 3.

further indicating that the Supreme Court regards the Indictment Clause as applicable to aggravating factors in the FDPA.

III. ARGUMENT

For these reasons, the Government sought a superseding indictment that included the threshold findings and the statutory aggravating factors. Unsatisfied with the superseding indictment, standby counsel want to stretch Ring and Jones far beyond their holdings by asking the Court to declare the FDPA unconstitutional. Apparently, standby counsel believe that Ring serves as a "get out of death free" card to murderers, such as Moussaoui, whose egregious conduct is at the heartland of cases considered death-worthy by Congress when it enacted the FDPA. To the contrary, this line of cases has a simple point: the Fifth and Sixth Amendments serve as important safeguards for "the formality of notice, the identity of the factfinder, and the burden of proof." Jones, 526 U.S. at 243 n. 6.

The Indictment Clause of the Fifth Amendment serves two functions. First, it acts as a check on prosecutorial power by entitling "a defendant to be in jeopardy only for offenses charged by a group of his fellow citizens acting independently of either the prosecutor or the judge." United States v. Field, 875 F.2d 130, 133 (7th Cir. 1989) (citing Stirone v. United States, 361 U.S. 212, 217-19 (1960)); see also United States v. Cotton, 122 S. Ct. 1781, 1786 (2002). "Second, it entitles a defendant to be apprised of the charges against him, so that he knows what he must meet at trial." Field, 875 F.2d at 133. See also Apprendi, 530 U.S. at 478 ("The defendant's ability to predict with certainty the judgment from the face of the felony indictment flowed from the invariable linkage of punishment with crime."). "[A]n indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an

acquittal or conviction in bar of future prosecutions for the same offense." Hamling v. United States, 418 U.S. 87, 117 (1974).

The second superseding indictment fulfills both functions of the Indictment Clause.[4] By the return of the second superseding indictment, the grand jury has determined that probable cause exists to warrant the special findings regarding the death penalty. Also, the superseding indictment provides notice to the defendant that he faces a death sentence and the reasons why he is eligible to receive such a sentence. Under the Indictment Clause, the defendant is entitled to no more.

Despite standby counsel's assertions to the contrary, the Court has no basis to read the Indictment Clause in conflict with the FDPA. Indeed, the Court is required to make every effort to read the Indictment Clause in harmony with the statute because "every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." Hooper v. California, 155 U.S. 648, 657 (1895); see also Salinas v. United States, 522 U.S. 52, 59-60 (1997) (counseling courts to construe statutes to avoid constitutional infirmity). Thus, "if an otherwise acceptable construction of a statute would raise serious constitutional problems, and where an alternative interpretation of the statute is 'fairly possible," [this Court is] obligated to construe the statute to avoid such problems." INS v. St. Cyr, 533 U.S. 289 (2001) (quoting Crowell v. Benson, 285 U.S. 22, 62 (1932)). Morever, the party challenging a statute bears the burden of demonstrating its unconstitutionality, Lujan v. G & G Fire Sprinklers, Inc., 121 S. Ct. 1446, 1452 (2001), and all acts of Congress are presumed to be a

[4]If the Supreme Court ultimately rules that the Indictment Clause does not apply to aggravating factors, defendant will not have been prejudiced; instead, he will simply have received an extra layer of review to which he was not entitled.

constitutional exercise of legislative power until the contrary is clearly established. Gibbs v. Babbitt, 214 F.3d 483, 504 (4th Cir. 2000).

With the return of the second superseding indictment, establishing that Counts One, Two, Three, and Four are capital-eligible, the procedures set forth in the FDPA should now be followed. The Government has already filed Notice, as required by 18 U.S.C. § 3593(a), setting forth the aggravating factors upon which it intends to rely during the penalty phase as a basis for death. Following Moussaoui's convictions for Counts One, Two, Three, and Four, the Court should conduct a penalty phase following the remaining procedures set forth in § 3593. In short, there is absolutely no conflict between the Indictment Clause and the FDPA.

Indeed, this very same procedure has been followed and approved by the Courts with the drug trafficking statutes since the Supreme Court's decision in Apprendi. For example, one provision of the narcotics statutory scheme, 21 U.S.C. § 841(b), provides for enhanced penalties for drug traffickers based upon the weight of the drugs involved in offense. Even though the enhancements are identified as "penalties" within the statute, in the post -Apprendi world, they are deemed elements of the offense to be charged in the indictment and proved to the jury beyond a reasonable doubt. United States v. Promise, 255 F.3d 150, 156 (4th Cir. 2001) (*en banc*). Since Apprendi, indictments alleging drug offenses now allege drug quantity to ensure compliance with both the Fifth and Sixth Amendments.

At the same time, efforts to declare the drug statute unconstitutional have failed. The Fourth Circuit in United States v. McAllister, 272 F.3d 228, 233 (4th Cir. 2001), and United States v. Chong, 285 F.3d 343, 346 (4th Cir. 2002), as well as every other circuit to address the issue, has rejected claims that the statute is unconstitutional in light of Apprendi. See United States v. Buckland, 289 F.3d

558, 562-68 (9th Cir. 2002) (*en banc*); United States v. Mendoza-Paz, 286 F.3d 1104, 1110 (9th Cir. 2002); United States v. Outen, 286 F.3d 622, 635-36 (2d Cir. 2002); United States v. Cernobyl, 255 F.3d 1215, 1219 (10th Cir. 2001); United States v. Martinez, 252 F.3d 251, 256 n. 6 (6th Cir. 2001); United States v. Brough 243 F.3d 1078, 1079-80 (7th Cir.), cert. denied, 122 S. Ct. 203 (2001); United States v. Slaughter, 238 F.3d 580, 581 (5th Cir. 2000) (per curiam), cert. denied, 532 U.S. 1045 (2001); see also United States v. Woodruff, __ F.3d __, 2002 WL 1446932 (11th Cir. July 3, 2002); United States v. Valdez-Santana, 279 F.3d 143, 147 (1st Cir. 2002) (21 U.S.C. § 952(a) constitutional). Moreover, the Supreme Court recently in United States v. Cotton, 122 S. Ct. at 1785, held that Apprendi attacks upon § 841(b) are to be analyzed under the "plain error doctrine" when the defendant fails to raise the Apprendi in the district court – a far cry from declaring the statute facially unconstitutional.

The FDPA on its face complies with Apprendi at least as much as § 841 because the FDPA specifically provides for a jury to determine the aggravating factors, unless both the defendant and the Government agree otherwise. 18 U.S.C. § 3593(b). However, even if this specific guarantee of jury determination did not exist, the statute would be constitutional because "the mere fact that the statute is silent regarding whether sentencing factors must be treated as elements in order for those factors to increase the defendant's statutory maximum sentence does not make the statute inconsistent with the constitutional requirement that those factors receive that treatment." United States v. McAllister, 272 F.3d 228, 233 (4th Cir. 2001).

Standby counsel complain that superseding the indictment impermissibly allows the Government to rewrite the FDPA because it commits to the Government the "sole responsibility for determining

which statutory aggravating factors will be included in the Notice of Intent to Seek a Penalty of Death and even what the nonstatutory aggravating factors will be." Standby Counsel's Memorandum at 4. This argument suffers from multiple flaws. First, Congress alone determines those *eligible* for the death penalty by requiring the Government to establish the following before a murderer, such as Moussaoui, may be sentenced to death:

1. Moussaoui was not "less than 18 years of age at the time of the offense." (18 U.S.C. § 3591);

2. The threshold *mens rea* findings set forth in 18 U.S.C. § 3591(a)(2); and,

3. At least one statutory aggravating factor set forth in 18 U.S.C. §3592(c).

Thus, *eligibility* for the death penalty is dictated by Congress, and the second superseding indictment is simply a manifestation of Congress' intent.

Standby counsel, citing United States v. Friend, 92 F. Supp.2d 534, 541-42 (E.D. Va. 2000), and cases cited therein, argue that the Government impermissibly controls the selection of aggravating factors with the return of the second superseding indictment. See Standby Counsel Memorandum at 4. In advancing this argument, standby counsel mistakenly mix statutory and non-statutory aggravating factors. The citation to Friend relates to non-statutory aggravating factors, which perform a completely different function than statutory aggravating factors. Unlike aggravating factors which determine *eligibility*, non-statutory aggravating factors aid the *selection* process. See United States v. Johnson, 1997 WL 534163 at *6 (N.D. Ill. 1997) (citations omitted) ("[S]tatutory aggravating factors narrow the class of defendants eligible for the death penalty whereas non-statutory factors serve the separate 'individualizing' function that ensures the jury has before it all possible relevant information about the

individual defendant whose fate it must determine."); United States v. Pitera, 795 F. Supp. 546, 559 (E.D.N.Y. 1992) ("Non-statutory aggravating factors are considered only after a defendant's membership in this narrow class [of persons eligible for the death penalty] is established beyond a reasonable doubt and only as a part of the jury's individualized sentencing consideration."); see also Jones v. United States, 527 U.S. 373, 381(1999) (discussing importance of "eligibility phase" and "selection phase" under FDPA and their differences); Buchanan v. Angelone, 522 U.S. 269, 275 (1998) (discussing the "eligibility" and "selection" phases of capital prosecution); Tuilaepa v. California, 512 U.S. 967, 971-73 (1994) (same). Thus, non-statutory aggravating factors do not increase punishment and, therefore, are not subject to the Indictment Clause.[5] Therefore, standby counsel's concerns about impermissible delegation to the Government are misplaced.

Standby counsel also question the role of mitigating evidence in the indictment process. Quite simply, it has no role and need not be passed upon by the grand jury because it does not operate to enhance the defendant's sentence. Instead, its function tracks that of exculpatory evidence, which need not be presented to the Grand Jury. United States v. Williams, 504 U.S. 36 (1992). Therefore, mitigating evidence need not be submitted to, or considered by, the grand jury.

Standby counsel also question the burden of proof and the evidentiary standards set forth in the FDPA. Simply put, Congress required in the FDPA that all aggravating factors be proven beyond a reasonable doubt. 18 U.S.C. § 3593(c). As to the evidentiary standards set forth in § 3593(c), the Supreme Court has held that relaxed evidentiary standards are appropriate at capital sentencing

[5]The second superseding indictment does not allege any non-statutory aggravating factors for this very reason.

hearings. See Gregg v. Georgia, 428 U.S. 153, 203-04 (1976). Moreover, Congress has spoken on the evidentiary standards, as is their province. "[W]here Congress has spoken, [the courts] have deferred to the 'traditional powers of Congress to prescribe rules of evidence and standards of proof in the federal courts' absent countervailing constitutional constraints." Steadman v. S.E.C., 450 U.S. 91, 95 (1981). Consequently, standby counsel's concerns about the burden of proof and evidentiary standards are unfounded.

Additionally, standby counsel argue that "the government here *can not* redefine the elements of the offense created by Congress with which the defendant has been charged by simply returning to the grand jury in an attempt to expand the scope of the indictment." Standby Counsel's Memorandum at 7-8. This claim makes little sense. Either the aggravating factors serve as a functional equivalent of an element or they do not. If they do, which is the only way the Indictment Clause is implicated, it is because they have been deemed by Congress as a minimum requirement for application of the death penalty. As the Supreme Court made clear in Jones, "[t]he 'look' of the statute is not a reliable guide to congressional intentions." Jones, 526 U.S. at 233. "It makes no constitutional difference whether a single subsection covers both elements and penalties, whether these are divided across multiple subsections (as § 841 does), or even whether they are scattered across multiple statutes . . . ." United States v. Brough, 243 F.3d at 1079; see also United States v. Outen, 286 F.3d at 636 (citing Brough). Thus, no redrafting has occurred by the superseding indictment, nor is it necessary.

IV. THE IMPACT OF RING UPON THE BURDEN OF PROOF

During the hearing on July 18, 2002, the Court asked the parties to brief whether Ring affects the burden of proof set forth in the FDPA. The Government respectfully submits that it does not. Ring

only requires a jury finding of an aggravating factor, which would be the functional equivalent of an "element" of an offense, beyond a reasonable doubt to render defendant eligible for the death penalty. Ring, 122 S. Ct. at 2443. The FDPA does just this. See 18 U.S.C. § 3593(c) ("The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless existence of such a factor is established beyond a reasonable doubt.").

Yet, the FDPA affords a death-eligible defendant even further protection because, even if the jury finds the existence of the requisite aggravating factor(s) beyond a reasonable doubt, they are not obligated to sentence a defendant to death. Instead, the jury then engages in a weighing process. 18 U.S.C. § 3593(e) ("the jury, or if there is no jury, the court, shall consider whether all the aggravating factor or factors found to exist sufficiently outweigh all the mitigating factor or factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factor or factors alone are sufficient to justify a sentence of death."). And, this weighing process occurs only **after** the jury has already found defendant eligible by finding that the Government has proved beyond a reasonable doubt at least one statutory aggravating factor. For this reason, Apprendi makes clear that the weighing process does not implicate the Fifth or Sixth Amendments. Apprendi, 530 U.S. at 495. Cf. Harris, 122 S. Ct. at 2415 ("Judicial factfinding in the course of selecting a sentence within the authorized range does not implicate the indictment, jury-trial, and reasonable-doubt components of the Fifth and Sixth Amendments."); United States v. General, 278 F.3d 389, 399 n. 3 (4th Cir. 2002) ("Apprendi does not apply to a drug quantity determination under the Sentencing Guidelines where the sentence does not exceed the statutory maximum."); United States v. Kinter, 235 F.3d 192, 199-201 (4th Cir. 2000) (same). Moreover, this weighing exceeds the requirements of the Constitution. See

Angelone v. Buchanan, 522 U.S. 269, 276 (1998) ("our decisions suggest that complete jury discretion is constitutionally permissible); Boyde v. California, 494 U.S. 370, 377 (1990) (upholding a statute mandating imposition of the death penalty when the aggravating factors simply "outweigh" the mitigating factors); Tuilaepa v. California, 512 U.S. 967, 978-79 (1994) ("A capital sentencer need not be instructed how to weigh any particular fact in the capital sentencing decision."); California v. Ramos, 463 U.S. 992, 1008 (1983) ("Once the jury finds that the defendant falls within the legislatively defined category of persons eligible for the death penalty . . . the jury then is free to consider a myriad of factors to determine whether death is the appropriate punishment."); Zant v. Stephens, 462 U.S. 862, 875 (1983) (the sentencer may be given "unbridled discretion in determining whether the death penalty should be imposed after it has found that the defendant is a member of the class made eligible for that penalty."); see also United States v. Chandler, 996 F.2d 1073, 1091-92 (11th Cir. 1993) (upholding the weighing standard under 21 U.S.C. § 848(k)). Consequently, Ring has no impact upon the weighing requirement of the FDPA.[6]

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[6]If defendant persists in his efforts to enter a guilty plea on July 26, 2002, the Court should not ask the defendant for his plea as to the threshold findings and statutory aggravating factors alleged in the Notice of Special Findings in the second superseding indictment; instead, the Court should leave the issue for the jury to decide during a penalty phase consistent with Ring and the FDPA. See 18 U.S.C. § 3593(b)(2)(A). Indeed, even if the defendant affirmatively repudiates the allegations in the Notice of Special Findings, the Court may take his guilty plea on the offenses if a sufficient factual basis exists to support a conviction for each offense. Cf. United States v. Henry, 282 F.3d 242, 253 (3d Cir. 2002) ("Having concluded that there was an *Apprendi* violation . . . we are presented with the novel issue of the proper remedy in such a case [where the defendant pleaded guilty to the general crime.] . . . . We see no reason why a jury cannot be convened for the sole purpose of deciding the facts that will determine sentence."); United States v. General, 278 F.3d 389, 393 (4th Cir. 2002) (guilty plea to drug offenses voluntary even though no mention of drug quantity during Rule 11 colloquy).

V. CONCLUSION

For the foregoing reasons, standby counsel's Motion to Dismiss Government's Notice of Intent to Seek a Sentence of Death, including the arguments raised in their supplemental memorandum, should be denied.

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that on the 22nd day of July, 2002, a copy of the Government's Response was provided to defendant Zacarias Moussaoui through the U.S. Marshals Service and faxed and mailed to the following::

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