

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

In the pro se defendant's motions docketed as #s 418, 435, 440 and 449, he seeks to discover the contents of his e-mail account at the xdesertman@hotmail.com address, which he purportedly accessed from various computers including those at Ali Mukaram's home, the University of Oklahoma, and Kinkos in Eagan, Minnesota. The United States responds that it has no such files and has submitted a certification from a custodian of records for MSN Hotmail explaining that all account information is deleted after 30 days of inactivity. The custodian also explained that login names become available for reuse after 90 days of dormancy. In such situations, MSN Hotmail apparently keeps no record of the original account and has no means of retrieving any information about the account.

Skeptical of the United States' response, the defendant requests forensic examinations of the computers from which he accessed the xdesertman@hotmail.com account. The United States does not oppose this request, but represents that it has produced

to the defense computer media seized from Ali Mukaram and the University of Oklahoma.¹

Given the intense law enforcement attention focused on Mr. Moussaoui after September 11, 2001, we do not understand why an immediate and thorough investigation into the defendant's e-mail and computer activities did not lead investigators to the xdesertman@hotmail.com account, if it existed.² Because a more detailed explanation from the United States is warranted, the defendant's motions requesting information about the xdesertman@hotmail.com account (Docket #s 418 and 435) are GRANTED; and it is hereby

ORDERED that counsel for the United States obtain an affidavit from the appropriate FBI official(s) explaining how and when, if at all, the FBI examined the contents of the defendant's computer, Ali Mukaram's computer, the University of Oklahoma computers, the Kinkos' computer and the xdesertman@hotmail.com e-mail account. The affidavit must indicate why investigators were unable to retrieve any information from MSN Hotmail and/or any other computers or accounts searched, and must make clear whether any efforts were made to obtain forensic expert services of any

¹ We understand that the United States did not recover any evidence of the defendant's use of the Internet from computers at Kinkos in Eagan, Minnesota and has not seized any computers from that location.

² The defendant states that the United States is in possession of a Kinkos' receipt dated August 12, 2001, which was found on his person when he was arrested on August 16, 2001.

other government agencies such as the CIA or NSA to assist in retrieving the information.

To facilitate the defendant's efforts to obtain this information on his own, his motions requesting the appointment of a forensic information technology expert (Docket #s 440 and 449) are GRANTED; and it is hereby

ORDERED that standby counsel assist the defendant in identifying and retaining such an expert, who is authorized to review the computer files and e-mail account at issue.

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

Entered this 27th day of August, 2002.

/s/

Leonie M. Brinkema
United States District Judge

Alexandria, Virginia