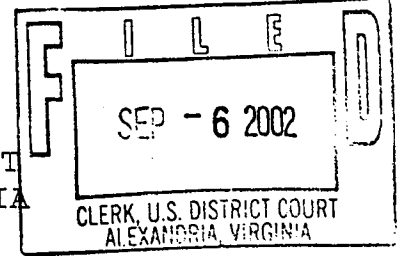


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION



UNITED STATES OF AMERICA )  
 )  
 v. ) Criminal No. 01-455-A  
 )  
 ZACARIAS MOUSSAOUI ) UNDER SEAL  
 a/k/a "Shaqil," )  
 a/k/a "Abu Khalid )  
 al Sahrawi," )  
 )  
 Defendant. )

ORDER

By a letter dated August 22, 2002, the United States sought the Court's assistance in securing the return of two documents containing classified information that had inadvertently been produced to the defendant. Specifically, the United States requested that the Court authorize a "walled off" FBI team to retrieve the documents from Mr. Moussaoui's cell. Rather than granting that request, we instructed the United States to clarify how classified documents were included in unclassified document productions, rejected the suggested recovery approach as an unreasonable intrusion into the defendant's work product, and indicated our willingness to consider entering an order directing Mr. Moussaoui to return the documents.

Although the initial letter to the Court referenced only two classified documents inadvertently produced to the defendant, the United States subsequently requested the return of seven documents. On August 26, 2002, we ordered the defendant to turn over the seven

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documents and four related CD ROMS<sup>1</sup> to deputy United States Marshals. The defendant was cooperative and the deputies were able to recover all of the CD ROMS; however, because the boxes of documents were not clearly indexed, after three days of diligent search during which time the defendant was deprived of access to the discovery materials, the deputies were only able to recover five of the seven documents. Although we denied the defendant's pro se Motion to Expulse [sic] the United States from the Arabian Discovery Cave (Docket #458), we directed that the search end by 5:00 p.m. on Wednesday, August 28, 2002.

By a letter dated August 29, 2002, the United States asked the Court to order the return of all 302's produced to the defendant. In the same letter, counsel hinted that the proposed course of action would also permit the United States to review the entire production for an unspecified number of additional documents possibly containing classified information. Through the Court Security Officer, the United States was instructed to provide us with a complete and final list of the documents at issue by September 3, 2002.

On September 5, 2002, the United States' wrote to the Court to request that the defendant be prevented from accessing the

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<sup>1</sup> Initially, all discovery was produced to the defendant on CD ROM. After he complained about inadequate equipment with which to review the discovery in electronic format, we ordered that hard copies be produced. The classified documents were, therefore, produced to the defendant both in electronic and paper format.

discovery materials until this discovery problem is resolved. Given the gravity of this security breach, the Court granted the request by orally instructing the United States Marshal to bar the defendant from reviewing hard copies of the discovery provided to him.

By another letter dated September 5, 2002, the United States advised that it had determined that a total of forty-eight documents, which should have been classified, were inadvertently produced to the defendant. That total includes the five documents recovered during the initial search authorized on August 26, 2002. The United States requests that the Court order the recovery of the remaining forty-three documents.

Based on our in camera review of two of the documents at issue, we find that significant national security interests of the United States could be compromised if the defendant were to retain copies of this classified information. Accordingly, the United States' request is GRANTED; and it is hereby

ORDERED that deputy United States Marshals accompanied by Court Security Officers retrieve from the Alexandria City Adult Detention Center any boxes containing FBI 302s or any FBI 302s outside of the boxes. Until these documents are retrieved, the defendant may not have access to the hard copies of the discovery produced to him. Once the documents at issue are retrieved, the defendant may have access to the discovery materials remaining with him; and it is further

ORDERED that the deputy United States Marshals and Court Security Officers are authorized to bring the boxes to an appropriately secure location within the courthouse to search for the remaining forty-three documents. Unless the documents contain the defendant's handwritten markings reflecting his work product, the classified documents will be returned to the United States; however, a copy of each document removed from the defendant's discovery is to be filed under seal with the Court Security Officer as part of the permanent record of this case; and it is further

ORDERED that the boxes containing the remaining unclassified discovery be returned to the defendant along with a list of the documents removed from the boxes (identified by Bates number). To minimize the disruption to the defendant's trial preparation, the search must be complete by 5:00 p.m. on Tuesday, September 10, 2002.

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

Entered this 6<sup>th</sup> day of September, 2002.

/S/

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Leonie M. Brinkema  
United States District Judge

Alexandria, Virginia