

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 RESPONSE TO DEFENDANT’S MOTIONS FOR DISCOVERY

The United States responds to defendant’s recent motions for discovery entitled “Moussaoui Deadlines to Government Liars” (docket number 469), “9/11 Casting Wanted” (docket number 470), and “FBI Analysis of the Hijackers’ Emails . . .” (Docket number 472). These motions should be denied. The defendant apparently seeks discovery to which he is not entitled under the law and for which he provides no reasonable justification.

First, in docket number 469, the defendant apparently requests that the United States produce reports of expert testimony and all discovery by September 30. No such deadline is warranted or necessary.

The Government has gone to extraordinary lengths to provide discovery in this case to the defendant and to his standby counsel. Production of discovery by the Government is nearly complete. Items that still remain to be produced generally consist of items that are still be discovered or translated. Specifically, for example, there is evidence discovered in Pakistan and Afghanistan that is being analyzed and translated on a continuing basis. As this material is being analyzed, if it is deemed to be discoverable, it is turned over. This process is likely to continue beyond September 30 because the war effort against *al Qaeda* continues.

Further, the Government will produce to the defendant a written summary of testimony the government intends to use under Fed. R. Evid. 702, 703 or 705, during its case in chief at

trial. This summary will include the witnesses' opinions, the bases and reasons therefor, and the witnesses' qualifications. See Fed. R. Crim. P. 16(a)(1)(E).¹ The Government will provide such expert discovery far enough in advance of trial to permit the defendant to retain defense experts if he so chooses.

Second, in docket number 470, the defendant apparently requests the names of Government witnesses sixty days before trial. This motion should be denied. In a capital prosecution, the United States is required to produce its witness list three days before trial. See 18 U.S.C. § 3432. In addition, the Court ordered on June 25, 2002, that the United States need only provide the witnesses' name and country and that the witness list is to be filed under seal.

Given the complexities of this case, however, the United States proposes that we provide our witness list to the defense on December 2, 2002, which is seven days before jury selection and 35 days before the beginning of trial.

In addition, we will comply with the Jencks Act and our obligations under Giglio.

Third, in docket number 472 the defendant seeks email evidence from the 19 September 11 hijackers, and the defendant generally demands exculpatory evidence. This motion should be denied as moot, as the Government has already provided the email evidence.

As a threshold matter, in response to defendant's request for exculpatory information, the United States has complied with its obligation under Brady and we will continue to do so.

With respect to email from the September 11 hijackers, the Government has produced all

¹ The Government has already produced several hundred FBI lab reports, the accompanying curriculum vitae for the authors of such reports, and photographs or copies of the evidence that is the subject of those reports. Thus, the defendant has been provided sufficient notice of the substance of the expert witnesses' expected testimony.

email it obtained from the 19 September 11 hijackers to the defense in electronic format. We have also recently provided a hard copy of any such email evidence to the defendant.²

For the foregoing reasons, the United States respectfully requests that the defendant's three noted motions be denied.

Respectfully Submitted,

Paul J. McNulty
United States Attorney

By: /s/
Robert A. Spencer
Kenneth M. Karas
David J. Novak
Assistant United States Attorneys

² The defendant refers to analysis of hijackers' emails cited in a August 29, 2002, USA Today article. The United States is aware of, and possesses, no such analysis.

CERTIFICATE OF SERVICE

I certify that on September 9, 2002, a copy of the foregoing Government's Response was sent by hand delivery, via the United States Marshal's Service to:

Zacarias Moussaoui
Alexandria Detention Center
2001 Mill Road
Alexandria, Virginia 22314

I further certify that on the same day a copy of the same attached pleading was sent by facsimile and regular mail to:

Frank Dunham, Jr., Esq.
Office of the Federal Public Defender
1650 King Street
Suite 500
Alexandria, Virginia 22314
Facsimile: (703) 600-0880

Gerald Zerkin, Esq.
Assistant Public Defender
One Capital Square, 11th Floor
830 East Main Street
Richmond, VA 23219
Facsimile: (804)648-5033

Alan H. Yamamoto, Esq.
108 N. Alfred St., 1st Floor
Alexandria, Va. 22314-3032
Facsimile: (703) 684-9700

Edward B. MacMahon, Jr., Esq.
107 East Washington Street
Middleburg, VA 20118

/s/ _____
Robert A. Spencer
Assistant U.S. Attorney