

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

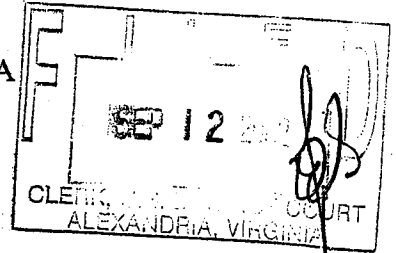
UNITED STATES OF AMERICA)

v.)

ZACARIAS MOUSSAOUI)

Criminal No. 01-455-A

UNDER SEAL



MOTION TO UNSEAL

COME NOW Frank W. Dunham, Jr., Edward B. MacMahon, Jr., Alan Yamamoto and
Gerald T. Zerkin, by counsel, and for their Motion to Unseal
state as follows:

REDACTED

REDACTED

The foregoing is also true with regard to all of the filings regarding the government's delivery of classified information to Mr. Moussaoui. Standby counsel know of no reason why the correspondence and pleadings regarding the government's dissemination of classified information to Mr. Moussaoui, and its later attempts to recover it through repeated searches of his cell and work papers, should not be made public. As far as we can see, sealing here is more to protect the government from embarrassment rather than to protect national security.

4. In sealing any matter, the Court must comply with the procedural requirements set forth by the United States Supreme Court and the Fourth Circuit. In *In re Knight Publishing Co.*, 743 F.2d 231 (4th Cir. 1984), the Fourth Circuit held that a District Court could not seal records and proceedings in a criminal case without first giving the public notice and an opportunity to be heard. *In re Knight Publishing Co.* at 234, citing *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982). This is because the public and press have a right, guaranteed by the First Amendment, to attend criminal trials, including access to pleadings and pre-trial hearings. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980). Though the right to public access to trials is not absolute, the presumption is in favor of openness because closed proceedings must be rare. *Press Enterprise v. Superior Court*, 464 U.S. 501 (1984).

The presumption of openness may be overcome only by an overriding interest based upon findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. That interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.

Id. at 510. "Even with findings adequate to support closure, the trial court must consider alternatives before the court room can be closed constitutionally." *In re Knight Publishing Co.* at 234, citing *Press Enterprises* at 511. See also, *In re Washington Post Co.*, 807 F.2d 383 (4th Cir. 1986).

CONCLUSION

[REDACTED]

[REDACTED]

[REDACTED] and the dissemination of classified information to Mr. Moussaoui and its retrieval, including this Motion, be unsealed and made available as part of the public record.

To the extent that any of those materials contain anything arguably classified, appropriate redactions should be sufficient to protect national security concerns.

Respectfully submitted,

~~STANDBY~~ COUNSEL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion to Unseal was served upon AUSA Robert Spencer, AUSA David Novak, and AUSA Kenneth Karas, U.S. Attorney's Office, 2100 Jamieson Avenue, Alexandria, Virginia 22314, by facsimile, and also by placing a copy BY HAND in the box designated "U.S. Attorney" in the Clerk's Office of the U.S. District Court for the Eastern District of Virginia; and, by first class mail upon Zacarias Moussaoui, c/o Alexandria Detention Center, 2001 Mill Road, Alexandria, Virginia 22314, on this 12th day of September, 2002.

18/
Edward B. MacMahon, Jr.