

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

For the reasons stated on the record during a closed hearing held on October 2, 2002, pursuant to the Classified Information Procedures Act, 18 U.S.C. App. 3,¹ standby counsel's motion to unseal, docketed as #543, is DENIED, as is the previously unresolved request in standby counsel's motion to unseal, docketed as #500.²

Given the continuance granted by our Order of September 30, 2002, the defendant's pro se motions docketed as #s 491 and 537, and standby counsel's motions docketed as 488, 494 and 542 will not be addressed at this time. That same Order also effectively granted the United States' request for additional time to respond to certain of these motions (Docket #580).

To avoid the inadvertent disclosure of classified

¹ Although standby counsel objected to the absence of the defendant from this hearing, consistent with our Order of August 23, 2002, which denied Mr. Moussaoui access to classified information, he was not present at the hearing.

² On September 26, 2002, standby counsel's Motion to Unseal was granted in part as to counsel's request to unseal correspondence, pleadings and orders concerning the inadvertent production of classified materials to the defendant.

information to the defendant and/or the public; it is hereby

ORDERED that the parties comply with the following procedure when preparing and filing pleadings in this case:

- Before filing any pleading with the court or sharing any proposed pleading with the pro se defendant, standby counsel must present such proposed pleading to the Court Security Officers for submission to a designated classification specialist who is to be "walled off" from all attorneys and investigators on the prosecution "team."³
- Within 48 hours, the classification specialist must advise standby counsel in writing (through the Court Security Officers) whether or not the pleading contains any classified information. If the pleading does contain classified information, the classification specialist must appropriately "portion-mark" the proposed pleading before returning it to standby counsel. See Exec. Order No. 12958 (1995). If the proposed pleading does not contain classified information, the pleading must be returned unmarked to standby counsel.
- In exceptional cases, if the classification specialist needs more than 48 hours to review a proposed pleading, standby counsel must be notified of, and provided with an explanation for, the delay.
- Standby counsel may not share any proposed pleading with the defendant until it has been reviewed by the designated classification specialist. If portions of a pleading are classified, only a redacted version may be shown to the defendant. If the entire pleading is classified, standby counsel may not share it with the defendant.
- The United States is required to submit its pleadings for a similar review to its own classification specialists before filing them with the court.
- Any pleading containing classified information may not be filed with the Clerk of Court; instead, it must be filed with the Court Security Officers. If the entire pleading is

³ If standby counsel are unsure about the propriety of planned discussions with the defendant or a potential witness, they should consult with the designated classification specialist for guidance as to what communications may be made without disclosing classified information.

classified, the Court Security Officers will maintain that pleading under seal. If only portions of a pleading are classified, unless the pleading is intended to be filed ex parte and/or under seal, the Court Security Officers are to maintain the original, unredacted pleading under seal and publicly file a redacted version of the pleading with the Clerk of Court.⁴

At the conclusion of the closed hearing, counsel for the United States orally moved to unseal the portion of the transcript concerning the applicability of Local Rule 57 to the parties and counsel. Because we find the request to be reasonable, the United States' oral motion is GRANTED; and it is hereby

ORDERED that, once the transcript is prepared and filed under seal with the Court Security Officers, the portion of the transcript regarding the applicability of Local Rule 57 to the parties and counsel be unsealed with any redactions necessary to protect classified information.

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

Entered this 3rd day of October, 2002.

/s/

Alexandria, Virginia

Leonie M. Brinkema
United States District Judge

⁴ Unless the United States intends for a pleading containing some classified information to be ex parte, a redacted, unclassified version must be served on the defendant.