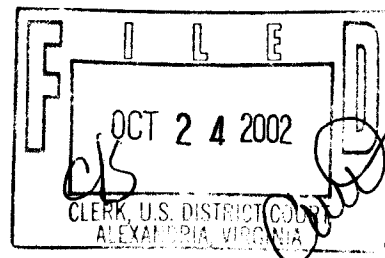


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION



UNITED STATES OF AMERICA)
)
 v.)
)
 ZACARIAS MOUSSAOUI)
 a/k/a "Shaqil,")
 a/k/a "Abu Khalid)
 al Sahrawi,")
)
 Defendant.)
)
 In re Material Witness)
 (Mukkarum Ali))

Criminal No. 01-455-A

UNDER SEAL¹

Unsealed 5/30/03

No. 02-252-MG

ORDER

Before the Court is Mukkarum Ali's Motion for Release of Material Witness, in which Ali requests the issuance of an order directing that he be released from the custody of the United States Marshals Service. The defendant supports the motion for release, but asks that we ensure Ali's live testimony at trial either by issuing him a short-term visa or by establishing a satellite link enabling him to testify at trial from a remote location (Docket #611). The United States does not oppose Ali's motion for release, but objects to both of the defendant's proposed means of securing the witness' live trial testimony. Standby defense counsel suggest that we grant Ali's motion for release on the condition that he submit to a video-taped deposition, and that we permit him to testify in person at trial

¹ This Order and related pleadings will be maintained under seal because they concern Mukkarum Ali's status as a material witness.

635

if he is available.

Ali, an Indian national illegally in the United States and subject to removal, has been in federal custody since September 14, 2001. Since June 25, 2002, he has been in the custody of the United States Marshal for this district under various court orders, including our Order of August 14, 2002.

At the request of both the defendant and the United States, the trial date has been continued to June 30, 2003. Given the extensive postponement of the trial date, we find it unreasonable to continue to detain Ali for another eight months. However, based on representations by the pro se defendant and standby counsel, we find Ali to be a material witness for the defense. See 18 U.S.C. § 3144. Therefore, resolution of Ali's Motion for Release of Material Witness and the defendant's pro se Motion to Support Mukkarum Ali's Motion for Release (Docket #611) are DEFERRED until Ali submits to a video-taped deposition to secure his trial testimony; and it is hereby

ORDERED that the parties² forthwith arrange for a video-taped deposition of this witness in accordance with Fed. R. Crim. P. 15.³ As soon as the deposition is complete, we will issue an

² The defendant's pro se status is not undermined by the mere presence of standby defense counsel at Ali's deposition. See McKaskle v. Wiggins, 465 U.S. 168, 176-84 (1984).

³ We decline to adopt either of the defendant's suggested approaches to present Ali's live trial testimony. The Court is not empowered to issue visas. See Romero v. Consulate, 860 F.

order vacating the Orders of August 14 and 27, 2002, and granting Ali's motion for release. He will then be turned over to the Immigration and Naturalization Service for removal from the United States. Nothing in this Order prevents the defense from issuing a trial subpoena to this witness, who, if able to return to the United States, may testify in person.

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

Entered this 24th day of October, 2002.

/s/

Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

/

'

Supp. 319, 322 (E.D. Va. 1994); City of New York v. Cronin, 878 F.2d 507, 512 (D.C. Cir. 1989) (finding that the exclusive authority to grant or deny visa applications rests with United States' consular offices). Further, a satellite link would not ensure Ali's presence as a witness at trial because taking testimony from a witness in a foreign country must be in compliance with applicable treaties and laws governing judicial assistance.