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FILED WITH
COURT SECURITY OFFICER
(Handwritten Signature)
DATE 1-21-2003

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

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UNITED STATES OF AMERICA) UNDER SEAL
)
 v.) Crim. No. 01-455-A
) Hon. Leonie M. Brinkema
ZACARIAS MOUSSAOUI)

GOVERNMENT'S OPPOSITION TO
STANDBY COUNSEL'S MOTION TO DISCLOSE DECLARATIONS

The United States respectfully submits this response to standby counsel's motion to disclose several declarations submitted as part of the Government's Consolidated Response in Opposition to Defense Motions for Pretrial Access and for Writs *Ad Testificandum* for [REDACTED]

[REDACTED]

In short, the motion should be denied as the Government already has agreed to provide cleared standby counsel with information, under the Classified Information Procedures Act ("CIPA"), that may constitute *Brady* material. Indeed, the Court has ordered the Government to provide any *Brady* information by January 21, 2003, which the Government will do, under Section 4 of CIPA. Therefore, because the defense will be provided with the information (or equivalent substitutes) contained in the declarations that may be *Brady*, the defense is not entitled to the production of the declarations.¹ These declarations contain [REDACTED] national

¹See *United States v. Bagley*, 473 U.S. 667, 675 (1985) ("the prosecutor is not required to deliver his entire file to defense counsel, but only to disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial."); *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977) ("There is no general constitutional right to discovery in a criminal case, and *Brady* did not create one."); *United States v. Williams*, 792 F. Supp. 1120, 1123 (S.D. Ind. 1992) ("Pre-trial discovery in criminal prosecutions is authorized by Federal Rule of Criminal

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security information unrelated to the charges in this case, and, therefore, their disclosure cannot be risked.² Accordingly, standby counsel's motion should be denied.

Respectfully Submitted,
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United States Attorney

By:

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Procedure 16, . . . [which] provides the only mechanism for either the defendant or the government in a criminal case to procure information held by the opposing party prior to trial.").

²That standby counsel have security clearances does not mean that they should be afforded access to all classified information relevant to the Court's consideration of an issue in the national security context. See *United States v. Bin Laden*, 126 F.Supp.2d 264, 287 n. 27 (S.D.N.Y. 2000) (rejecting defense counsel's assertion that given their security clearance, they had a right to access to sensitive documents submitted for *ex parte*, *in camera* review).

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CERTIFICATE OF SERVICE

I certify that on January 21, 2003, a copy of the foregoing Government's Response was provided to the Court Security Officer for service upon:

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