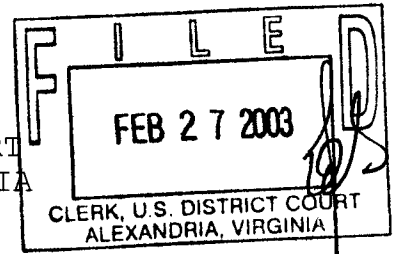


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION



UNITED STATES OF AMERICA )  
 )  
 v. )  
 )  
 ZACARIAS MOUSSAOUI )  
 a/k/a "Shaqil," )  
 a/k/a "Abu Khalid )  
 al Sahrawi," )  
 )  
 Defendant. )

Criminal No. 01-455-A

**UNDER SEAL**

*Unsealed 5/30/03*

ORDER

Before the Court is the defendant's pro se Motion to Compel Death Judge Brinkema to Unseal the Testimony of Brother El Hadi on the 11 of March to Expose Dunham Manipulation to Ensure My Death (Docket #768).<sup>1</sup> Mr. Moussaoui objects to the scheduled Fed. R. Crim. P. 15 deposition of El Hadi Ndiaye, and requests that if the deposition goes forward it be open to the public.

In addition to assisting Mr. Moussaoui in the preparation of his pro se defense, standby counsel are obligated to pursue independent defense theories in the event that Mr. Moussaoui forfeits his right serve as his own counsel. Because counsel have articulated a reasonable basis for preserving this testimony, we have authorized the deposition. Therefore, the defendant's motion is DENIED to the extent that he asks the Court

---

<sup>1</sup> This motion has been filed ex parte and under seal because it concerns a dispute between the defendant and standby counsel regarding the purported relevance of Mr. Ndiaye's testimony. Standby counsel advised the Court how the witness' testimony supports their theory of the case in the ex parte attachment to their Emergency Motion for Rule 15 Deposition of El Hadi Ndiaye.

to reconsider standby counsel's request to secure Mr. Ndiaye's trial testimony pursuant to Fed. R. Crim. P. 15.

If the defendant continues to proceed pro se, he ultimately will decide whether to present Mr. Ndiaye's testimony at trial.<sup>2</sup> Until or unless the witness' testimony is introduced at trial, it is not for public consumption. For this reason, it would be inappropriate to conduct the deposition in open court. Accordingly, the defendant's motion is DENIED.

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

Entered this 27<sup>th</sup> day of February, 2003.

/S/

---

Leonie M. Brinkema  
United States District Judge

Alexandria, Virginia

---

<sup>2</sup> Because Mr. Moussaoui disagrees with standby counsel about the relevance of Mr. Ndiaye's testimony, he need not participate in the deposition at all.