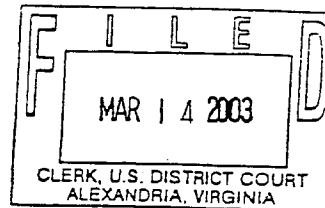


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division



UNITED STATES OF AMERICA, )  
 )  
 v. ) Criminal No. 01-455-A  
 )  
 ZACARIAS MOUSSAOUI, ) UNDER SEAL  
 a/k/a "Shaqil" )  
 a/k/a "Abu Khalid )  
 al Sahrawi," )  
 )  
 Defendant. )

FILED WITH  
COURT SECURITY OFFICER  
*Moa J. [unclear]*  
DATE 3-14-03

ORDER

Before the Court is the Government's Motion to Supplement the Appellate Record (Docket #788), in which it requests that the record underlying the United States' interlocutory appeal of the January 30, 2003 ruling be supplemented to include the classified summaries [REDACTED] produced to standby defense counsel on March 10, 2003. Standby counsel oppose this motion arguing that the Federal Rules of Appellate Procedure do not contemplate the supplementation of the record to include post-judgment evidence not before the district court when it rendered its decision.

Pursuant to Fed. R. App. P. 10(e)(2), "[i]f anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded...by the district court..." As recognized by the United States in its motion, the classified summaries produced on March 10, 2003 were not before the Court when it issued its

January 30, 2003 ruling from the bench because the Government had not been provided with the [REDACTED] statements at that time. The absence of the statements from the record before this Court, therefore, was not the product of "error or accident." Rather, the United States' March 10, 2003 production to standby counsel was in compliance with its ongoing discovery obligations in this case. If the Government believes that the substance of the new statements is sufficiently material to alter the Court's original ruling, it should file an appropriate motion to reconsider.<sup>1</sup> Accordingly, the Government's Motion to Supplement the Appellate Record is DENIED.

The Clerk is directed to forward copies of this Order to counsel for the United States; standby defense counsel; and the Court Security Officer, who is to submit a copy of this Order for classification review so that an appropriate version can be provided to the pro se defendant.

Entered this 14th day of March, 2003.

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Leahie M. Brinkema  
United States District Judge

Alexandria, Virginia

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<sup>1</sup> In consideration of the Government's request for the issuance of a protective order pursuant to 18 U.S.C. App. 3 § 4, the Court reviewed the classified summaries [REDACTED]

[REDACTED] Although the summaries reflect new statements [REDACTED] they do not materially change the record for appellate purposes. See also Standby Counsel's Opposition at 5, fn. 3.