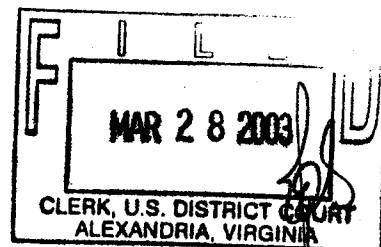


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division



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.)

ORDER

On March 25, 2003, the pro se defendant filed an "Emergency Motion to Force Ashcroft and the FBI (Fascist Bureau of Inquisition) to Produce Mohammed Statement that Zacarias Moussaoui was Not Part of the [indecipherable] 9/11 Mujahid Operations" (Docket #796), in which he contends that he needs the "exculpatory statement of [his] brother Mohammed (before March 28)" to include in his appellate brief. The United States opposes the request arguing that the Court has stayed resolution of the defendant's motion to compel Mohammed's trial appearance (Docket #771).¹ Relying on our Order of March 14, 2003, in which we denied its Motion to Supplement the Appellate Record, the

¹ The Government properly notes that we have stayed resolution of Mr. Moussaoui's motion to compel the trial appearance of Khalid Sheikh Mohammed until the issue now before the Court of Appeals is resolved. However, the prosecution is mistaken in its understanding that its obligation to produce to the defense the content of any exculpatory statements by Mr. Mohammed is stayed as well. To the extent that any statements by Mohammed constitute Brady material, they must be promptly produced to the defense in compliance with the Government's continuing obligation to produce exculpatory evidence in its possession.

Government further contends that "any statements received by the Government since the Court's decision of January 31, 2003 have no bearing on the issues now on appeal."

The Order of March 14, 2003 did not hold that statements received by the Government after January 31, 2003 had "no bearing on" the issues on appeal. Rather, pursuant to Fed. R. App. P. 10(e)(2), we found no basis upon which to expand the appellate record beyond the materials before the Court when the ruling being appealed was issued.

For the same reasons, it would be inappropriate to require the United States to expedite any forthcoming discovery productions to enable the defendant to incorporate information outside the confines of the appellate record in his brief. Accordingly, the defendant's Emergency Motion (Docket #796) is DENIED WITHOUT PREJUDICE.

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 this Order for an expedited classification review so that an appropriate version can be provided to the pro se defendant. The Court expects that any redaction of this Order will be kept to a minimum.

Entered this 28th day of March, 2003.

/S/

Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

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