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FILED WITH
COURT SECURITY OFFICER
[Signature]
DATE 9/8/2003

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

UNITED STATES OF AMERICA

v.

ZACARIAS MOUSSAOUI

Criminal No. 01-455-A

~~TOP SECRET CLASSIFIED~~
~~FILING/UNDER SEAL~~

**STANDBY COUNSEL'S MOTION TO COMPEL PRODUCTION TO THE PRO SE
DEFENDANT OF THE GOVERNMENT'S MOTION FOR SUBSTITUTIONS AND THE
GOVERNMENT'S PROPOSED SUBSTITUTIONS FOR THE DEPOSITION
TESTIMONY**

On September 5, 2003, the government filed its Motion for Substitutions Pursuant to CIPA § 6(e)(2) (the "Motion") attaching its Proposed Substitutions

The government has refused to provide to Mr.

Moussaoui a copy of its Motion or the Substitutions reasoning that "the Court may well reject the proposed substitutions," and [a]ccordingly, the Government does not believe that it would be appropriate at this time to authorize a disclosure to the defendant of its Proposed Substitutions." Motion at 1, n .1. Instead, the government offers to provide the Substitutions to Mr. Moussaoui only if the Court adopts them. At that time, the government states, "we will seek a limited authorized disclosure of the substitutions to the defendant as was done previously with the Government's proposed substitutions"

The government's refusal to provide the Substitutions to Mr. Moussaoui is inconsistent with the procedures previously adopted by the Court,

which were based on the remand order of the Court of

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Appeals directing that Mr. Moussaoui "[be] given an opportunity to respond to any proposed substitutions." Order at 1 (4th Cir., No. 03-4162, filed Apr. 14, 2003). Indeed, when the government initially refused to provide [REDACTED] Substitution to Moussaoui, this Court unequivocally stated,

This proposal is unacceptable for at least two reasons. First, it violates the remand of the United States Court of Appeals for the Fourth Circuit, which explicitly directed that both "the defendant and standby counsel are to be given an opportunity to respond to any proposed substitutions." Second, because only Mr. Moussaoui can advise the Court and/or his standby counsel what, if any, exculpatory material is missing from the Proposed Substitutions, a meaningful evaluation of the adequacy of the Government's submission is impossible without input from the defendant."

Order at 1-2 (filed Apr. 24, dkt. no. 864).

Standby counsel have long maintained that Mr. Moussaoui cannot get a fair trial as a pro se litigant without access to all of the classified *Brady* material produced in this case. See, e.g., Standby Counsel's Reply to Government's Response in Opposition to Defendant's Pro Se Pleading Entitled "Redaction to Coverup Their Lies" (filed Apr. 24, 2003, dkt. no. 866); Letter to Judge Brinkema from Messrs. Dunham, MacMahon and Yamamoto 1-2 (dated Aug. 6, 2003). Likewise, Mr. Moussaoui needs at least the government's Motion and the proposed Substitutions in order to fairly and accurately present his views on the content of acceptable substitutes, if any. For that matter, the government's refusal to provide this material to Mr. Moussaoui appears inconsistent with its recent pronouncement that his pro se status should be allowed to continue, see Letter to Judge Brinkema from AUSA Robert Spencer at 1 (dated Aug. 7, 2003), for as the government well knows, its refusal prevents Mr. Moussaoui from commenting on the Substitutions or meaningfully participating in the substitution process.

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Accordingly, for the foregoing reasons, standby counsel move the Court to compel the government forthwith to provide the Motion and the proposed Substitutions to Mr. Moussaoul under the same procedures utilized for [REDACTED] Substitution.

Respectfully submitted,

STANDBY COUNSEL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing pleading was served upon AUSA Robert A. Spencer, AUSA David Novak and AUSA Kenneth Karas, U.S. Attorney's Office, 2100 Jamieson Avenue, Alexandria, VA 22314, by hand-delivering a copy to the Court Security Officer on this 8th day of September 2003.

[Redacted Signature]

Kenneth F. Tracoll

¹ Pursuant to the Court's Order of October 3, 2002 (dkt. no. 594), on the date that the instant pleading was filed, a copy of the pleading was provided to the Court Security Officer ("CSO") for submission to a designated classification specialist who will "portion-mark" the pleading and return a redacted version of it, if any, to standby counsel. A copy of this pleading, in redacted form or otherwise, will not be provided to Moussaoui until standby counsel receive confirmation from the CSO and/or classification specialist that they may do so.