

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	)	

**MOTION FOR GUIDANCE REGARDING THE SETTING OF A TRIAL DATE**

COME NOW standby counsel and, given the uncertain posture of this case arising from the government's appeal of the Court's October 2, 2003 ruling, move this Honorable Court for guidance regarding the setting of a trial date in order to avoid unnecessary expenditure of resources on this case.

At this time, standby counsel cannot be substantially certain as to whether we should be prepared to try a case without a death penalty and without reference to the events of September 11, or with a death penalty based upon the events of September 11. There is substantial time and expense yet to be incurred in preparation for a defense to the latter alternative (*see ex parte, in camera* attachment). Further, the possibility of a death penalty/September 11 trial will require continued dedication of resources of standby counsel, particularly the Office of the Federal Public Defender, during the pendency of the appeal without assurance that adequate preparation time will be available if there is a reversal. Some or all of the expenditure of these funds and the continued dedication of resources may turn out to be unnecessary if this Court is affirmed. Further, there remain outstanding numerous discovery issues and potential CIPA issues yet to be resolved and which are blocking defense efforts to proceed with certain aspects of preparing a September 11/death penalty defense.

Incurring costs unnecessarily could be avoided, however, by the Court deciding now the amount of time we will have after the mandate is received until the beginning of the trial. If the Court is affirmed — and September 11 and the death penalty are out of the case completely — we can be ready for trial in ninety (90) days. If, however, the Court of Appeals reverses, we will need one hundred and eighty (180) days to complete these tasks.

Accordingly, we respectfully request and suggest that the Court enter an Order declaring that trial of this case will not occur earlier than one hundred and eighty days after receipt of the mandate from the Court of Appeals if this Court is reversed, or ninety days if this Court is affirmed, and that the Court stay all further proceedings in the district court until a mandate from the Court of Appeals is received. Without this relief, standby counsel will be forced to proceed with defense preparation for a capital trial involving September 11 events while the appeal is pending and must seek to have the Court rule upon outstanding discovery issues while this appeal is pending.

ZACARIAS MOUSSAOUI  
By Standby Counsel

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#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion for Guidance Regarding the Setting of a Trial Date (without the *ex parte* attachment) 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 placing a copy BY HAND in the box designated for the United States Attorney's Office in the Clerk's Office of the U.S. District Court for the Eastern District of Virginia and UPON APPROVAL FROM THE COURT SECURITY OFFICER, via first class mail to Zacarias Moussaoui, c/o Alexandria Detention Center, 2001 Mill Road, Alexandria, VA 22314 this 27th day of October, 2003.

\_\_\_\_\_/S/  
Frank W. Dunham, Jr.