

FILED

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

2005 FEB -1 P 3:40



UNITED STATES OF AMERICA

v.

ZACARIAS MOUSSAOUI

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)

Crim. No. 01-455-A

The Honorable Leonie M. Brinkema

UNITED STATES DISTRICT COURT  
ALEXANDRIA, VIRGINIA

GOVERNMENT'S NON-CONFIDENTIAL MEMORANDUM ACCOMPANYING ITS  
MOTION FOR A PROTECTIVE ORDER PROVIDING PROSPECTIVELY FOR FILING  
DOCUMENTS UNDER SEAL PURSUANT TO LOCAL RULE 49(E)

The United States, by the Office of the Inspector General of the United States Department of Justice, through local counsel and pursuant to Local Rule 49(E) of the Local Criminal Rules for the United States District Court for the Eastern District of Virginia, asks for an Order sealing the documents attached to its Motion to Seal.

**I. ITEMS TO BE SEALED AND NECESSITY FOR SEALING**

Glenn A. Fine, Inspector General of the United States Department of Justice, has filed a motion on behalf of the Office of the Inspector General (OIG) seeking leave to publicly release the unclassified version of the OIG's report entitled, "The FBI's Handling of Intelligence Information Related to the September 11 Attacks" (the Report). Three exhibits were filed with this motion, including a copy of the unclassified Report and a letter setting forth the defense's objections to portions of the Report being released to the public. The government is filing its motion for permission to release the report under seal to give the Court an opportunity to review the motion and the unclassified report, which is an attachment to the motion.

As the attached motion reflects, the OIG believes it should be permitted to release the unclassified Report in its entirety, and is seeking a ruling from the Court to that effect.

The OIG also believes that nothing in the motion seeking release of the Report should remain under seal and not be disclosed. The OIG's motion for public release of the Report contains its arguments as to why the Report should be released. All of the information in that motion either consists of legal arguments or information that already has been publicly disclosed.

In an abundance of caution, however, the OIG is filing its motion under seal to allow the Court to review the motion itself to determine whether it should remain sealed.

The government has considered procedures other than sealing and none will suffice to protect this information from potential disclosure to the public prior to a ruling from this Court on the OIG's motion.

## **II. REFERENCES TO GOVERNING CASE LAW (Local Rule 49(B)(2))**

The Court has the inherent power to seal materials submitted to it. See United States v. Wuagneux, 683 F.2d 1343, 1351 (11<sup>th</sup> Cir. 1982); State of Arizona v. Maypenny, 672 F.2d 761, 765 (9<sup>th</sup> Cir. 1982); Times Mirror Company v. United States, 873 F.2d 1210 (9<sup>th</sup> Cir. 1989); see also Shea v. Gabriel, 520 F.2d 879 (1<sup>st</sup> Cir. 1975); United States v. Hubbard, 650 F.2d 293 (D.C. Cir. 1980); In re Braughton, 520 F.2d 765, 766 (9<sup>th</sup> Cir. 1975). "The trial court has supervisory power over its own records and may, in its discretion, seal documents if the public's right of access is outweighed by competing interests." In re Knight Pub. Co., 743 F.2d 231, 235 (4<sup>th</sup> Cir. 1984).

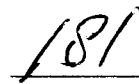
## **III. PERIOD OF TIME GOVERNMENT SEEKS TO HAVE MATTER REMAIN UNDER SEAL (Local Rule 49(D)(4))**

The materials to be filed under seal would need to remain sealed until the Court rules on the OIG's motion seeking leave to release publicly its Report. If the Court grants the OIG's motion to release the Report, pursuant to Local Rule 49(B)(3) the sealed materials will be

automatically unsealed. If the Court denies the OIG's motion, the OIG believes the Court should unseal the OIG's motion to publicly release the Report and the arguments contained in the motion, along with the Court's ruling.

WHEREFORE, the United States respectfully requests that a Protective Order be entered allowing the United States to prospectively file documents under seal.

Respectfully submitted,



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Glenn A. Fine  
Inspector General  
United States Department of Justice

Local counsel:

Paul J. McNulty  
United States Attorney

Robert A. Spencer  
David J. Novak  
David Raskin  
Assistant United States Attorneys

Certificate of Service

I certify that on February 1, 2005, a copy of the foregoing Non-confidential Memorandum was served by regular mail to:

Edward B. MacMahon, Jr., Esquire  
107 East Washington Street  
Middleburg, VA 20118  
Facsimile: (540) 687-6366

Frank Dunham, Jr., Esquire  
Office of the Federal Public Defender  
1650 King Street  
Alexndria, VA 22314  
Facsimile: &703) 600-0880

Alan H. Yamamoto, Esquire  
108 N. Alfred Street, 1<sup>st</sup> Floor  
Alexandria, VA 22314-3032  
Facsimile: (703) 684-9700

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Robert A. Spencer  
David J. Novak  
David Raskin  
Assistant United States Attorneys