

FILED

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

2005 MAR 24 P 3:28

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA



UNITED STATES OF AMERICA)
)
 v.)
)
 ZACARIAS MOUSSAOUI)

Crim. No. 01-455-A
Hon. Leonie M. Brinkema

**MOTION TO AMEND ACCESS TO CLASSIFIED NATIONAL SECURITY
INFORMATION**

Defendant Zacarias Moussaoui, by counsel, moves this Court to amend the list of defense personnel who are approved by the Court to have access to classified documents and information by adding Drs. Paul R. Martin, Stuart Grassian, and Xavier F. Amador, and in support thereof, states as follows:

1. On January 22, 2002, this Court entered a Protective Order (the "Order") directing that access to classified documents and information, as required by the government's discovery obligations and otherwise as necessary to prepare for proceedings in this case, be given to specified individuals working on behalf of the defendant. See Order ¶ 12 (dkt. no. 54). The Order also requires that any additional persons who need access to classified documents and information obtain "approval [from the Court] for access to the appropriate level of classification on a need to know basis." *Id.* Those persons also must "satisfy[] the other requirements described in [the] order." *Id.*

2. Paul R. Martin, Ph.D., a psychologist, Stuart Grassian, M.D., a psychiatrist, and Xavier F. Amador, Ph.D., a psychologist, have been retained by the defense to assist with mental health issues pertinent to the guilt and penalty phases of this case. In connection therewith, Drs. Martin, Grassian and Amador will need to examine classified information in the defense SCIF that has or could have a bearing on

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Mr. Moussaoui's mental health. Drs. Martin, Grassian and Amador are currently in the process of applying, through CSO Christine Gunning, for the appropriate security clearances. That process is expected to be completed within the near future.

3. The government has informed defense counsel that it objects to Drs. Martin, Grassian and Amador¹ having access to classified information at this time. Instead, the government wants the defense to designate under CIPA § 5 the exact documents to be shown to Martin, Grassian and Amador so that the possibility of declassifying the documents can first be explored.

4. The problem with the government's approach is that it would intrude into the attorney-expert relationship by requiring the defense to identify the documents and information they want to share with their experts. Defense counsel are not entitled to learn of the information shared between the prosecutors and their experts, so the government should not be accorded that right either. More importantly, the government's approach assumes that defense counsel, who are not mental health experts, can determine what documents would be material to such an expert. Counsel lack the training and qualifications to properly make this determination.

5. Accordingly, it is requested that this motion be granted, and that Drs. Martin, Grassian and Amador be added to the list of defense personnel set forth in

¹ The undersigned has only spoken with the government about Drs. Martin and Grassian. It is assumed that the government will object to a clearance for Dr. Amador for the same reason that it objects to one for Drs. Martin and Grassian.

paragraph 12 of the Order subject to compliance with the other terms and conditions of the Order.²

Respectfully submitted,

ZACARIAS MOUSSAOUI
By Counsel

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Frank W. Dunham, Jr.
Federal Public Defender
Kenneth P. Troccoli
Assistant Federal Public Defender
Eastern District of Virginia
1650 King Street, Suite 500
Alexandria, Virginia 22314
703-600-0800

Dated: March 24, 2005

² Pursuant to paragraph 11.b of the Order, attached is an original signed Memorandum of Understanding from Drs. Martin, Grassian and Amador in which they agree to comply with the terms of the Order. Also attached is a proposed order for the Court's consideration.

CERTIFICATE OF SERVICE³

I hereby certify that on this 24th day of March, 2005, a true copy of the foregoing pleading was served upon AUSA Robert A. Spencer, AUSA David J. Novak and AUSA David Raskin, 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 by facsimile upon same to 703-299-3982 (AUSA Spencer), 804-771-2316 (AUSA Novak) and 212-637-0099 (AUSA Raskin).

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Kenneth P. Troccoli

³ Pursuant to the Court's order of October 3, 2002 (dkt. no. 594), the instant pleading was presented to the CSO for a classification review before filing. That review determined that the pleading is not classified. A copy of this pleading was not provided to Mr. Moussaoui until after completion of the classification review.