

FILED

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

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CLERK U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA



UNITED STATES OF AMERICA)	Case No. 01-455-A
)	
v.)	The Honorable Leonie M. Brinkema
)	
ZACARIAS MOUSSAOUI)	

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, on behalf of the Office of the Inspector General (OIG) of the United States Department of Justice, 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

The United States, on behalf of the OIG, has filed a motion seeking leave to publicly release the redacted, unclassified version of the OIG’s report entitled, “The FBI’s Handling of Intelligence Information Related to the September 11 Attacks” (Report). Three exhibits were filed with this motion, including a copy of the redacted, unclassified Report. The government is filing the OIG’s motion for permission to release the Report under seal to give the Court an opportunity to review the motion and the exhibits..

As the attached motion reflects, the OIG is asking for leave to to release the redacted unclassified Report, and the prosecutors and the defense do not oppose this motion. The OIG is seeking a ruling from the Court to permit public release of the redacted version of the unclassified Report.

The OIG also believes that nothing in the motion seeking release of the redacted Report should remain under seal and not be disclosed. The OIG's motion for public release of the redacted 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 government is filing the OIG's 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 (11th Cir. 1982); State of Arizona v. Maypenny, 672 F.2d 761, 765 (9th Cir. 1982); Times Mirror Company v. United States, 873 F.2d 1210 (9th Cir. 1989); see also Shea v. Gabriel, 520 F.2d 879 (1st Cir. 1975); United States v. Hubbard, 650 F.2d 293 (D.C. Cir. 1980); In re Braughton, 520 F.2d 765, 766 (9th 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 (4th 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 redacted Report. If the Court grants the

OIG's motion to release the redacted 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 redacted 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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