

FILED

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

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CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA



UNITED STATES OF AMERICA)

Crim. No. 01-455-A

v.)

The Honorable Leonie M. Brinkema

ZACARIAS MOUSSAOUI)

~~UNDER SEAL~~
Unsealed 6/7/05 in part

MOTION BY THE OFFICE OF THE INSPECTOR GENERAL OF THE DEPARTMENT OF JUSTICE PURSUANT TO LOCAL RULES 57.1(E) & (G) FOR LEAVE TO PUBLICLY RELEASE REDACTED, UNCLASSIFIED VERSION OF ITS REPORT ENTITLED "A REVIEW OF THE FBI'S HANDLING OF INTELLIGENCE INFORMATION RELATED TO THE SEPTEMBER 11 ATTACKS"

The Office of the Inspector General (OIG) of the United States Department of Justice, through local counsel, respectfully requests this Court, pursuant to Rule 57.1(E) & (G) of the Local Rules of the Eastern District of Virginia, authorize the public release of the OIG's redacted, unclassified report entitled, "A Review of the FBI's Handling of Intelligence Information Related to the September 11 Attacks" (9/11 Report or Report).¹

As detailed in a previous motion filed on February 1, 2005, with this Court, in response to requests from the FBI and Congress, in July 2004 the OIG completed a classified report regarding the FBI's handling of intelligence information relating to the September 11 attacks. One of the chapters of that report examined the Federal Bureau of Investigation's (FBI) investigation of the Moussaoui case. The OIG provided the classified report to the Department and Congressional oversight committees.

¹ The United States Attorney's Office for the Eastern District of Virginia joins in this motion only to the extent that it serves as local counsel for the United States as mandated by Local Rule 57.4(D). The trial team assigned to the prosecution of the defendant has advised the OIG that they do not oppose this motion.

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Several members of Congress asked the OIG to create and publicly release an unclassified version of the report because, according to them, the information in the Report was “of significant public interest” and “critical to effective Congressional oversight of the FBI and other Federal agencies.” The OIG therefore created an unclassified version of the report and provided a copy of it to the prosecutors handling the Moussaoui case, as well as to the defense attorneys appointed to represent Moussaoui, for their views on the issue of public release of the Report.

The prosecutors took no position on public release of the Report. By letter dated December 15, 2004, the defense attorneys responded that they believed certain information in the Report should be redacted before public release. The defense specified that information, which included the entire chapter in the report addressing the FBI’s handling of the Moussaoui investigation, references in other chapters to Moussaoui or the OIG’s review of the FBI’s handling of the Moussaoui investigation, and other information that it believed should be redacted before public release of the Report.²

The OIG believed those proposed redactions were overbroad and therefore filed with this Court a motion for leave to release the unredacted, unclassified version of the OIG’s 9/11 Report, without the defense’s proposed redactions. In its motion, the OIG argued that release of the Report would not be contrary to Local Criminal Rule 57.1. The defense counsel opposed the OIG’s motion.

In an order issued on April 28, 2005, the Court denied the OIG’s motion.

² A copy of the defense attorneys’ December 15, 2004, letter was attached to the OIG’s February 1 motion as Exhibit C and is attached to this pleading as Exhibit A.

In light of the Court's ruling, and after review of the transcript of the hearing held on April 28, 2005, during which the OIG's motion was briefly discussed, the OIG has redacted from the unclassified version of the 9/11 Report all the information that the defense specified should be redacted.³ As a result, the unclassified Report, as redacted, contains no references to Moussaoui, the FBI's investigation of Moussaoui, or any other information specified by the defense for redaction.⁴

In a letter dated May 11, 2005, the OIG provided the redacted, unclassified version of the Report to the prosecutors and the defense and asked whether they had any objections to the OIG's release of the redacted unclassified version of the Report. The prosecutors did not raise any objection. In a letter dated May 17, 2005, the defense responded by stating that it took no position as to whether the release of the redacted Report violated Local Rule 57.1. However, the defense did not object to release of the Report. In a follow-up conversation to clarify the defense response, defense counsel informed the prosecutors that they took no position with regard to release of the redacted Report and deferred to the Court.

Despite the absence of opposition by the prosecutors or the defense, in an abundance of caution and in deference to the Court, the OIG is filing this motion seeking permission to release the redacted version of the unclassified Report. Given that this version of the Report eliminates all references to Moussaoui, as well as everything else requested by defense counsel, we do not believe its release violates Rule 57.1

³ There are only four minor exceptions. On pages 47, 49, 50, and 51, the defense suggested that the sentences beginning with "At the time of the Moussaoui investigation..." be deleted in their entirety. We redacted the phrase, "At the time of the Moussaoui investigation" but left the remainder of the sentences, since the remainder of each sentence contains a statement of law or procedure and does not relate to the Moussaoui investigation.

⁴ A copy of the redacted, unclassified version of the Report is attached to this pleading as Exhibit B.

In sum, given the significant public interest in the release of the Report, the lack of any references to Moussaoui or even the FBI's investigation of Moussaoui in the Report, the redaction of all other information requested by the defense, and the lack of opposition to the OIG's public release of this Report by either the defense or the prosecutors, the OIG respectfully requests that this Court expeditiously grant the OIG's unopposed Motion and permit public release of the redacted, unclassified Report.

Respectfully submitted,

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