

COURT SECURITY OFFICER  
DATE 11/3/2005

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

NOV - 3 2005  
CLERK U.S. DISTRICT COURT  
ALEXANDRIA VIRGINIA

UNITED STATES OF AMERICA )  
 )  
 v. )  
 )  
 ZACARIAS MOUSSAOUI, )  
 a/k/a "Shaqil," )  
 a/k/a "Abu Khalid )  
 al Sahrawi," )  
 )  
 Defendant. )

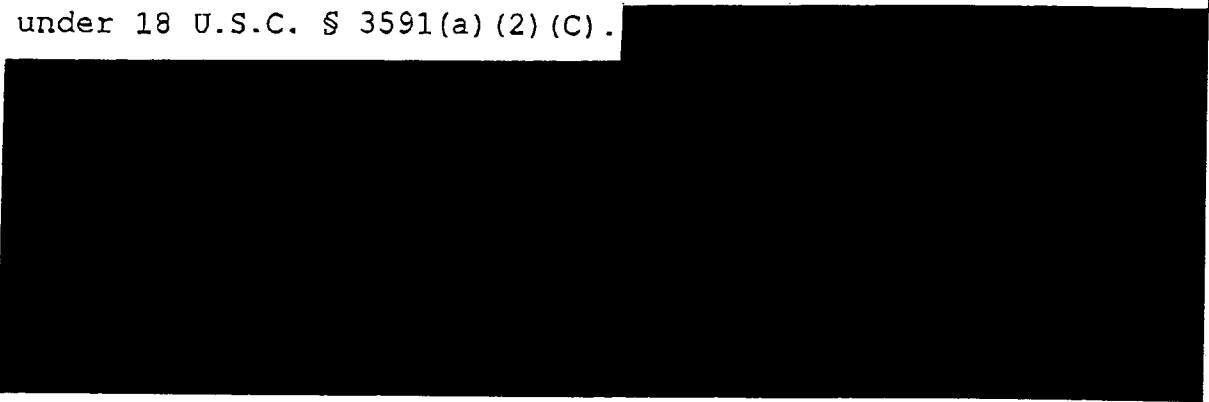
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Order


In its Motion for Reconsideration of the Court's Order of May 2, 2005 ("Motion for Reconsideration") (Docket #1282), the government asks the Court to reconsider the May 2, 2005, Order (Docket #1275). Specifically, the government argues that the Order improperly requires broad disclosure of national security information of high sensitivity before the Court has determined that the sensitive information is relevant to the penalty phase of the trial. The defense opposes this motion arguing that the statements from the [REDACTED] witnesses, [REDACTED] [REDACTED] remain extremely relevant both to the defendant's being eligible for the death penalty as well as to the issues of aggravating and mitigating factors.

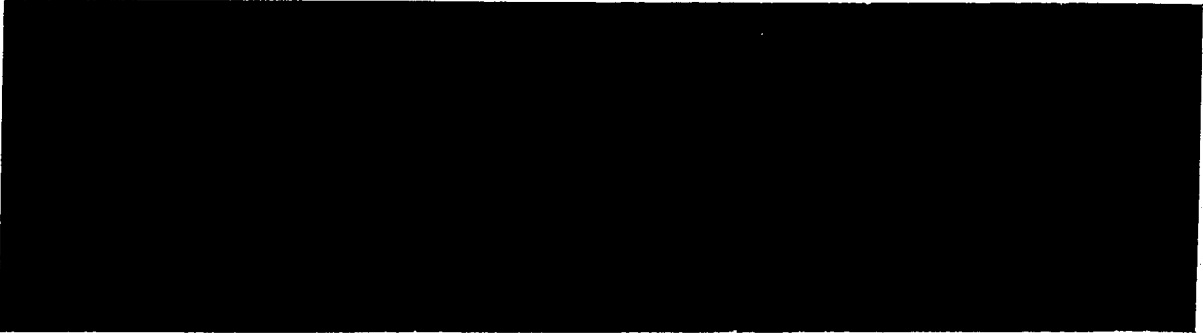
The Court fully agrees with the defense's assessment of the significance of these witnesses. The defendant's guilty pleas to

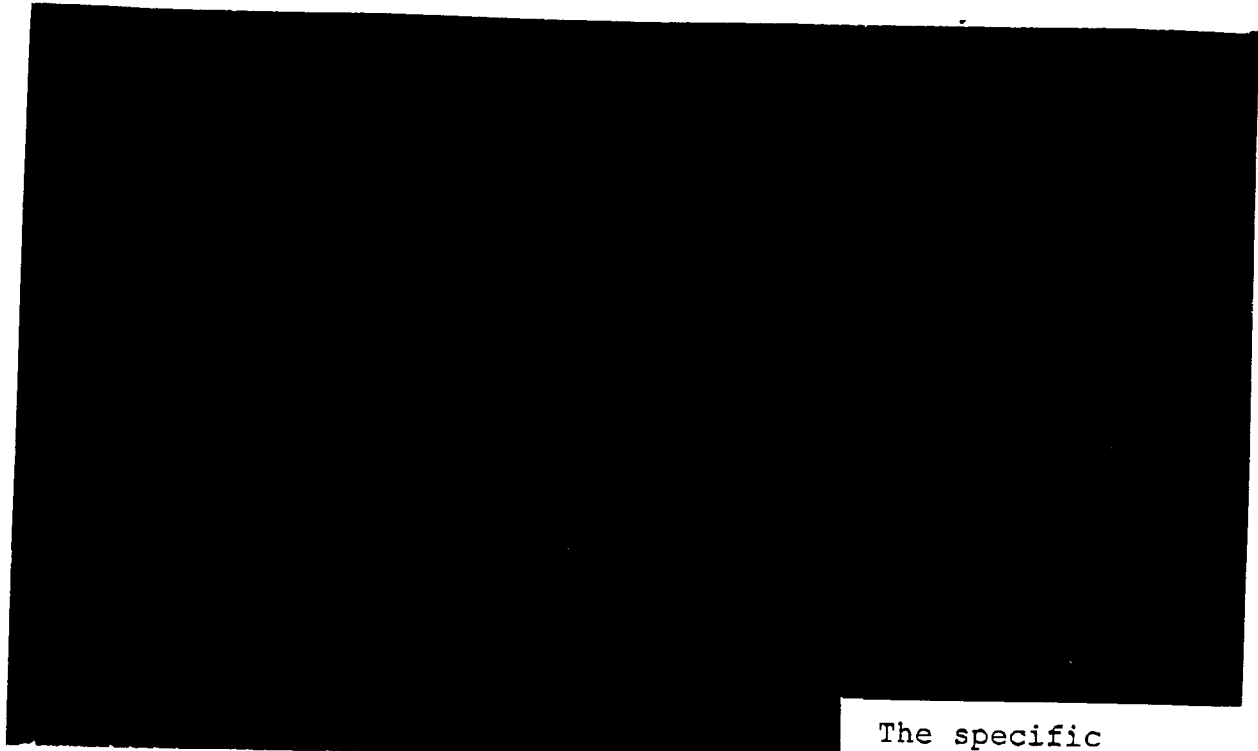
the indictment have not reduced the relevance of these witnesses to this case because the government has made clear that it is pursuing the death penalty for the defendant on the ground that his post-arrest lies constitute the "act" resulting in death under 18 U.S.C. § 3591(a)(2)(C).



Accordingly, the Court finds that these witnesses' statements remain extremely material to this case.

The government further argues that even if the statements are relevant, it is premature to require production of information  before the parties try to negotiate a jury instruction that might satisfy the Court's concerns. The Court finds merit to that argument. To assist counsel in formulating such an instruction, the Court envisions it would include language along the following lines:





The specific statements which the parties want to introduce would then be listed in the jury instruction and this instruction would go to the jurors when they deliberate.

For these reasons, to the extent the Motion for Reconsideration asks the Court to find that the statements of the [redacted] enemy combatant witnesses are no longer relevant and material, the motion is DENIED. To the extent the Motion asks the Court to consider whether a proposed jury instruction can eliminate the need for the classified information [redacted]

[redacted] the Motion is GRANTED, and it is hereby

ORDERED that counsel submit their proposed jury instructions

within eleven (11) days.<sup>1</sup>

Lastly, to ensure that the record on the issue of the witnesses is complete, that portion of the May 2, 2005, Order that required the government to confirm or deny [REDACTED] [REDACTED] remains in full force and effect. The Court will allow the government to respond ex parte, however, if the government declines to respond to the Order, the Court will draw the inference [REDACTED] [REDACTED] and the Court will add language to that effect to the jury instruction.

The Clerk is directed to forward copies of this Order to counsel of record and the Court Security Officer.

Entered this 3<sup>rd</sup> day of November, 2005.

/s/

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Leonie M. Brinkema  
United States District Judge

Alexandria, Virginia

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<sup>1</sup> The Court retains the option to reinstate any obligation included in the May 2, 2005, Order if the parties cannot provide a sufficient jury instruction procedure sufficient to ensure a fair trial.