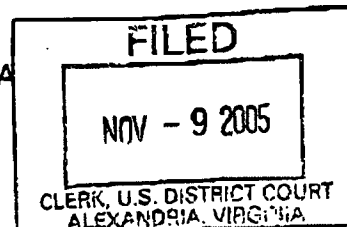


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DATE 11/9/05

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



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

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

DEFENDANT'S MOTION TO MODIFY TRIAL SCHEDULE

Defendant Zacarias Moussaoui ("Moussaoui"), by and through counsel, moves this Court to move this matter for one month, from January 9, 2006 to February 6, 2006 for the jury selection and from February 6, 2006 to March 6, 2006 for opening statements and the taking of evidence.¹ The Government consents to this request.

I. Introduction

On May 6, 2005, the Court issued an order requiring that jury selection begin on January 9, 2006 with the selection phase of the trial to begin on February 6, 2006 with opening statements. During the course of preparation for trial it has become apparent that the parties cannot be prepared to begin jury selection or the selection phase by those dates. As is set forth in detail below, this request is not occasioned by any dilatory behavior on the part of the defense or the Government. Rather, this request is compelled by two overriding facts. First, the defense just recently learned of the

¹ As discussed more fully below, additional preparation time may be necessary should the Court grant the pending defense motion for access to additional enemy combatant witnesses

[REDACTED] and the renewed motion for access to [REDACTED]

[REDACTED]

existence of [REDACTED] witnesses whose potential testimony would be exculpatory to Moussaoui on one of the critical remaining issues relating to eligibility. Second, the remaining time between the date of this request and the start of jury selection is simply insufficient to allow for the completion of the many tasks that remain to be completed before trial can begin. These issues are addressed below.

II. New Witnesses

Today, the Government submitted a CIPA § 4 filing concerning [REDACTED] and is in the process of submitting a § 4 filing [REDACTED] have information that the defense regards as likely Brady information that the defense must perpetuate in order to provide effective assistance and a complete defense. That evidence, as it has been related to us by the Government, supports the defense theory of the case and exculpates Moussaoui by supporting the defense claim that he was not involved in and had no knowledge of the September 11 attacks. That information would bolster Moussaoui's credibility while undermining the Government's claim that he did possess information regarding the September 11 attacks that he could have related to the Government which would have prevented the deaths from occurring. This evidence, again as related to the defense, is likely core Brady and it will take some amount of time to investigate and convert it into admissible evidence.

According to the Government, [REDACTED] possesses information regarding matters that the defense has been requesting. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Government indicates [REDACTED] information

[REDACTED]

[REDACTED] Such information is consistent with Moussaoui's statements made during the course of his plea. [REDACTED]

[REDACTED]

Once the defense receives further information [REDACTED] defense will attempt [REDACTED] can be accomplished within the time frame of the Court's present schedule.

In addition [REDACTED] the defense has filed a motion for access [REDACTED] and a renewed motion for access [REDACTED]

[REDACTED]

[REDACTED]

III. Remaining Discovery Issues and CIPA Litigation

As the Court is well aware, this is an exceptionally complicated case with respect to the discovery of the various classified documents and facts that relate to the issue of eligibility. In order to properly defend this case, the defense must be able to present to the jury the facts relating to the Government's knowledge of Bin Laden and his plans

[REDACTED]

[REDACTED]

[REDACTED]

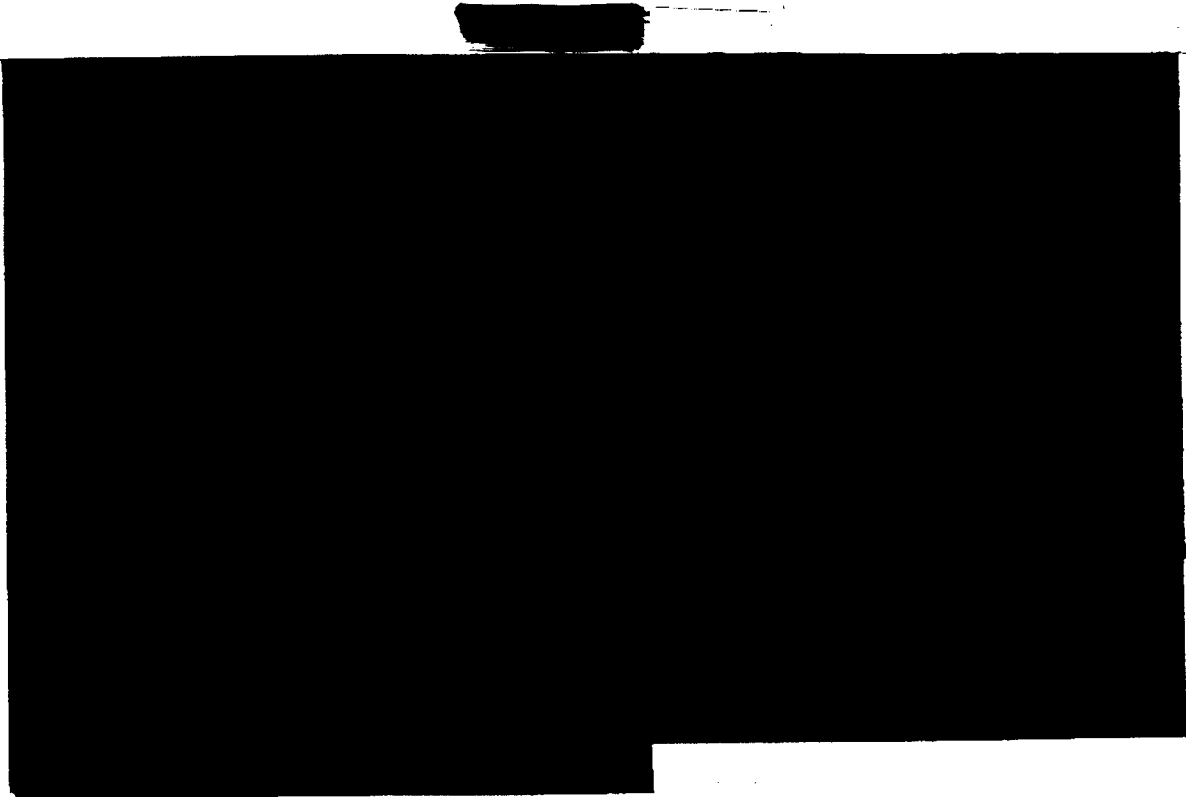
before September 11, 2001. The various investigations, including the 9/11 Commission Report, the DOJ OIG Report, the House and Senate Joint Inquiry Report ("JICI Report"), and the CIA OIG Report, all address, in one part or another, these same questions from different perspectives. These reports are a benefit to the defense once they are received as well as a burden.³ They are a benefit because they detail the vast majority of the information that the defense needs. They are a burden because there is so much information to be obtained and organized in a manner that the jury can assimilate and understand easily. This process began shortly after the Court lifted its stay in this matter on March 28, 2005 and became more focused after Moussaoui's guilty plea on April 22, 2005. This is because the admissions by him of certain facts combined with the Government's statements related to death eligibility substantially altered the landscape of the case.

These requests have been the subject of various letters to and meetings with the Government.

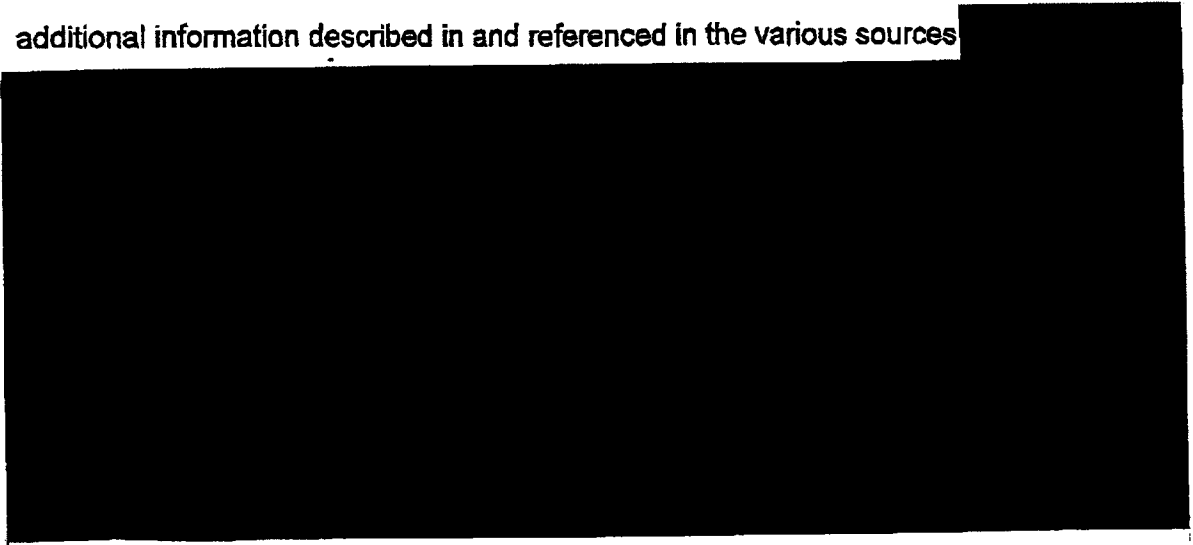
[REDACTED]

³ The defense still has not received the classified version of the JICI Report nor any version of the CIA Report

[REDACTED]



On October 4 and 5, 2005,⁵ the defense reiterated its prior requests for additional information described in and referenced in the various sources



⁵ A copy of the October 4 and 5, 2005 letters is attached.



[REDACTED]

[REDACTED] Once received, the records will have to be designated and copies made and filed with the Court under CIPA as appropriate. Since counsel have not seen the documents, counsel have no idea how long this process may take, but from recent experience, it is estimated that it will take at least a month.

In addition [REDACTED]
[REDACTED] there are additional files containing documents which the defense has not been permitted to review [REDACTED]
[REDACTED]

As a result of the discovery requests, the defense is still receiving documents from the Government that it expects to designate under CIPA. The Government indicates that it intends to provide additional documents in the near future which the defense has requested and those documents will likely be designated under CIPA also. The Court surely knows the incredible volume of information that must be litigated under CIPA before this case is ready for trial. In addition to the sheer volume of information that has been designated, and we are told by the CSO that this amount of classified information is in fact unprecedented, there are numerous agencies that must be consulted by the Government before these matters can be fully and finally litigated. There are classified documents that have been designated that have been produced by many different agencies. Each of these agencies has its own procedure for reviewing and declassifying information. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] It is difficult to see how this process be completed in the very short time remaining before the start of trial, especially if one considers the Government's right to suggest substitutions and/or block the disclosure of information under CIPA § 6.

IV. Substitutions for Trial Testimony of Enemy Combatant Witnesses

Pursuant to the Fourth Circuit's opinion in this case, the parties are obligated to craft substitutes for the testimony [REDACTED] enemy combatant witnesses. [REDACTED]

[REDACTED] The process of creating these substitutions will be time-consuming given the volume [REDACTED] and the fact that this process is a novel one for the Court and counsel. No one can say how long this will take but it appears unlikely that this process can be completed in the time remaining before trial, especially when it is layered upon the other matters set forth above.

V. Additional Matters

There are a number of pending motions before the Court that may necessitate hearings or additional briefings. There are, moreover, some number of additional pre-trial motions that will likely be filed by one or both parties as the trial date approaches. Finally, the jury questionnaire must be prepared as well as the final jury instructions for this very complex capital case.

CONCLUSION

For the foregoing reasons, and any others adduced at a hearing on this motion, Moussaoui respectfully requests that the Court grant this motion and continue the proceedings for one month, from January 9, 2006 to February 6, 2006 for the jury

[REDACTED]



selection and from February 6, 2006 to March 6, 2006 for opening statements and the taking of evidence.

Respectfully submitted,

ZACARIAS MOUSSAOUI
By Counsel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing pleading was served upon AUSA Robert A. Spencer, AUSA David Novak and AUSA David Raskin, U.S. Attorney's Office, 2100 Jamieson Avenue, Alexandria, VA 22314, by hand-delivering a copy of same to the Court Security Officer on this 9th day of November 2005.⁶

/s/

Alan H. Yamamoto

⁶ Pursuant to the Court's Order of October 3, 2002 (dkt. no. 594), on the date that the instant pleading was filed, a copy of the pleading was provided to the Court Security Officer ("CSO") for submission to a designated classification specialist who will "portion-mark" the pleading and return a redacted version of it, if any, to defense counsel. A copy of this pleading, in redacted form or otherwise, will not be provided to Moussaoui until counsel receive confirmation from the CSO and/or classification specialist that they may do so.

ATTACHMENTS REDACTED

(14 pages)