

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

UNITED STATES OF AMERICA

vs.

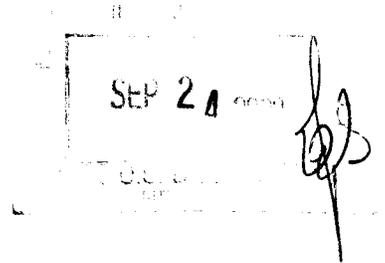
ZACARIAS MOUSSAOUI,

Defendant.

THE NEW YORK TIMES COMPANY,

Movant-Intervenor.

Criminal No. 01-455-A



**THE NEW YORK TIMES COMPANY'S MOTION FOR
CLARIFICATION OR MODIFICATION OF PROTECTIVE ORDER**

Comes now Movant-Intervenor The New York Times Company ("The Times") and, for its motion for clarification or modification of the Protective Order entered on February 5, 2002 (the "Order"), respectfully states:

1. This is a criminal prosecution instituted by the United States against Zacarias Moussaoui. Defendant is charged with conspiracy to commit acts of terrorism, to commit aircraft piracy, to destroy aircraft, to use airplanes as weapons of mass destruction, to murder government employees, and to destroy property, all in connection with the terrorist attacks on the United States on September 11, 2001. His trial currently is scheduled for January 2003 and the Court regularly is engaged in resolving pre-trial motions presented by both the government and the defendant.

2. The Times has sought certain materials from the Port Authority of New York and New Jersey (the "Port Authority") under the Port Authority's freedom-of-information policy and

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state law. The Port Authority has refused to release the materials to The Times. It has informed The Times that it has provided copies of the requested materials to the prosecution in this case. The Port Authority asserts that the Order bars it from producing copies of the requested materials to The Times.

3. By this motion, The Times seeks clarification or modification of the Order. Specifically, The Times respectfully submits that the Order does not and should not apply to the Port Authority, both under the plain language of the Order and under applicable law. Even were the Order construed to reach the Port Authority, however, it would be subject to review under the First Amendment. Under established law, restraining the Port Authority from releasing the materials requested by The Times would constitute an impermissible restraint on speech.

WHEREFORE, for the foregoing reasons and those set forth more fully in the accompanying memorandum of law and the Affidavit of David E. McCraw, The Times respectfully requests that the Court enter an order clarifying or modifying the Order so that it (i) does not bind the Port Authority, or (ii) in the alternative, does not apply to the specific materials requested by The Times.¹

¹ Although not necessarily applicable to the instant motion, in compliance with Local Rule 7(D), counsel for The Times previously has conferred with counsel for the United States, which counsel for The Times understands objects to this motion. Stand-by counsel for defendant had not taken a position on this motion prior to the time of filing. The Times is not able to ascertain the position of the defendant with regard to this motion.

Dated: September 24, 2002

Respectfully submitted,

LEVINE SULLIVAN & KOCH, L.L.P.

By: 

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OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that, on this 24th day of September 2002, I caused true and correct copies of the foregoing Motion for Clarification or Modification of Protective Order and the accompanying Affidavit of David E. McCraw to be served by the means indicated, upon counsel and the defendant as follows:

By Hand Delivery:

Zacarias Moussaoui, Inmate
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