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

OCT 17 2002

Alexandria Division

UNITED STATES OF AMERICA,

v.

Criminal No. 01:455 - A

ZACARIAS MOUSSAOUI

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**SUPPLEMENTAL MEMORANDUM IN SUPPORT  
OF MOTION TO POSTPONE THE DEPOSITION  
OF FAIZ BAFANA**

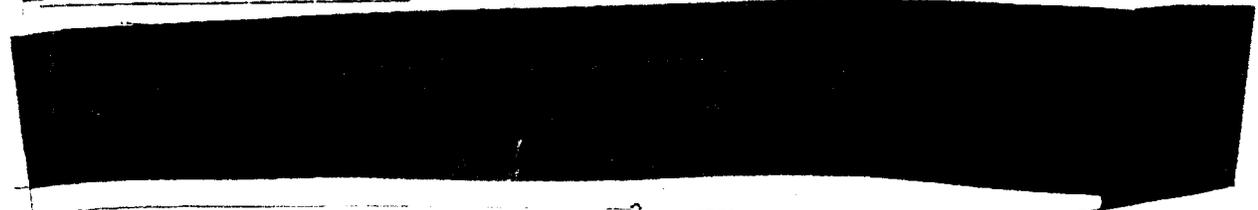
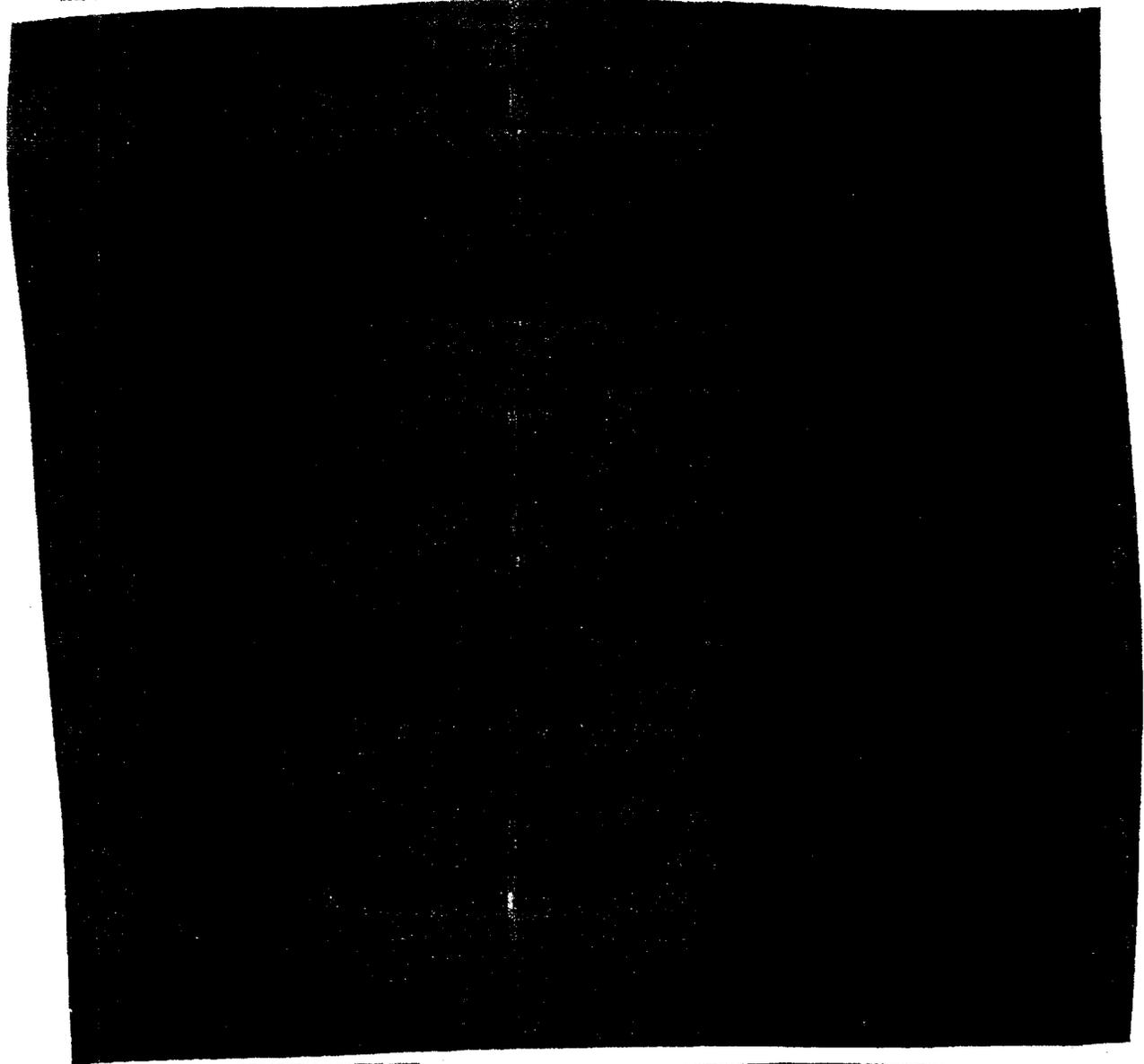
COME NOW Frank W. Dunham, Jr., Edward B. MacMahon, Jr., Alan Yamamoto and Gerald T. Zerkin, by counsel, and for their Supplemental Memorandum in Support of Motion to Postpone the Deposition of Faiz Bafana, state as follows:

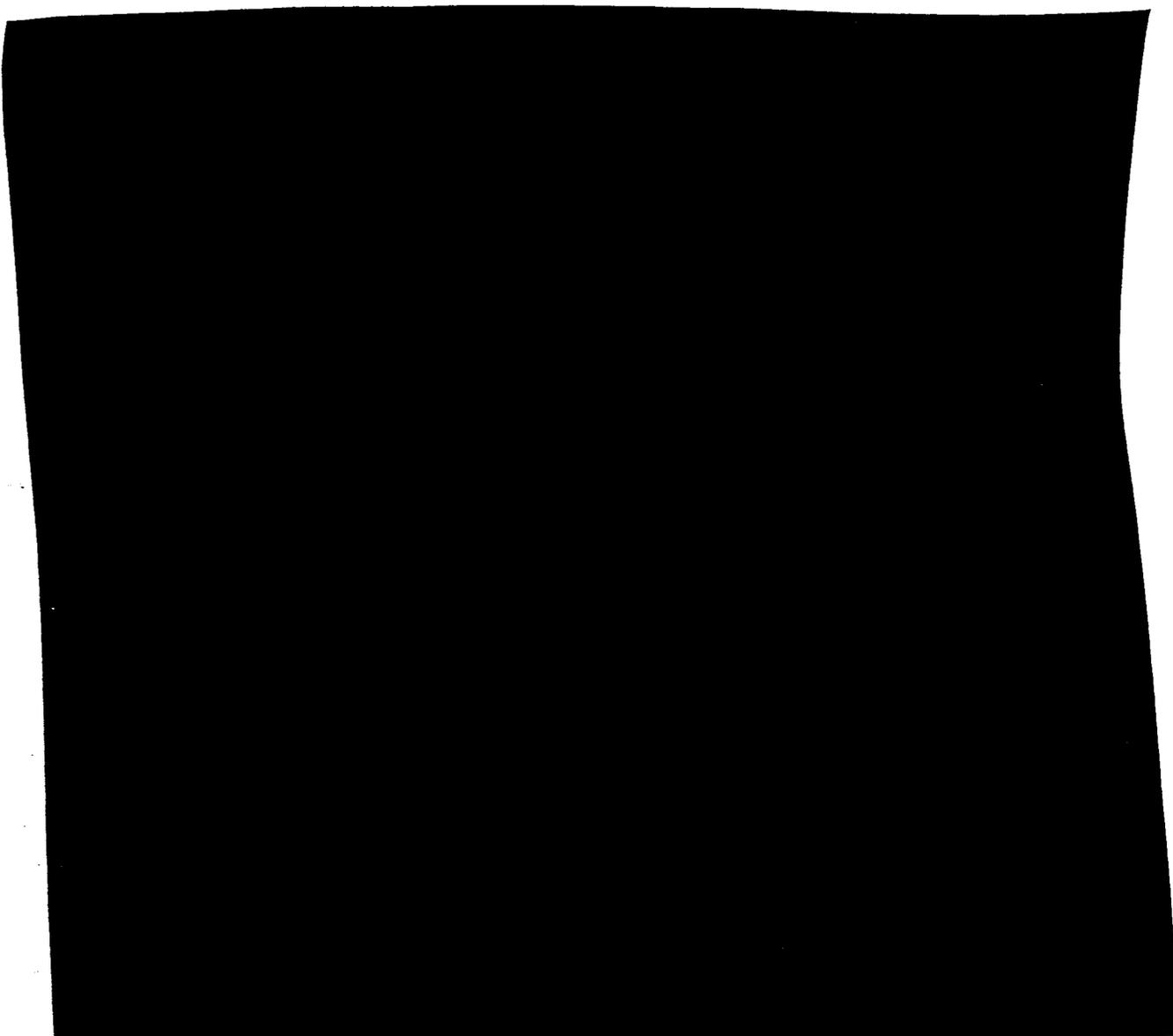
I. Introduction.

Since the date that Mr. Moussaoui filed a request to postpone the Bafana deposition, and since the date that standby counsel filed a written response in support of that request, additional issues have arisen as to the propriety of perpetuating the testimony of this crucial witness on the date suggested by the government. In addition to the previously expressed need to conduct a thorough investigation in Malaysia and in the SCIF before the deposition, we have located materials in the SCIF that bear directly upon the matters that are raised [REDACTED] that must be addressed at a CIPA hearing before any deposition can be taken. Because he is not

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allowed to see or hear about classified information, Mr. Moussaoui, who is acting as his own counsel, is being placed in the untenable and unconstitutional position of participating in the direct and cross-examination of a witness at his own capital case without the benefit of any of the information in the SCIF.





The importance of this information to Mr. Moussaoui, and its relevance to the case, is as follows. Mr. Moussaoui has contended on numerous occasions that he was in the United States to participate in some other unknown plot. He has denied in all respects any involvement in

9/11.



Bafana

is not charged, to our knowledge, with any involvement in 9/11. The fact that Mr. Moussaoui

[REDACTED] would be evidence [REDACTED]

This

information is thus central to Mr. Moussaoui's defense but is not available to him in the event that this deposition is taken on the current schedule. Such a deprivation is inimical to Mr. Moussaoui right of self-representation, to due process and to confrontation.

2. The Defense Requires Discovery and CIPA Hearings before this Deposition can Proceed.

The issues raised in this motion demonstrate that the standby counsel and Mr. Moussaoui require discovery and CIPA hearings before this deposition can proceed. As this testimony is being perpetuated for use in this capital case, the defense and Mr. Moussaoui must be accorded a meaningful opportunity to prepare to the cross-examination of Bafana.

[REDACTED] Without this

information, it is unlikely that Mr. Moussaoui would know that he could develop his defense through the cross-examination of Bafana. Finally, he must be provided all information that is in the government's possession, classified or unclassified, [REDACTED]

Recognizing that this Court is unlikely to give Mr. Moussaoui access to any classified information, the defense requests that such discovery be provided to it in the SCIF so that this information can be designated and then litigated as to its use in this case pursuant to CIPA. Of course, were Bafana to appear at trial, this issues could run the regular course of a CIPA schedule

and the information would be have been determined by this Court to have been usable by the defense, in some form, pursuant to § 6 of CIPA. In the present posture, standby counsel are in the position of having knowledge that there are significant areas of inquiry that should be addressed with Bafana that cannot be discussed with Moussaoui because the information is classified.

In addition, further examination must be conducted of the materials in the SCIF to determine whether additional information regarding Bafana or the matters he discusses has been provided in discovery including, but not limited to, materials-dealing with 

3. Conclusion.

We know of no way to prepare Moussaoui for this deposition without necessarily disclosing classified information which we are prohibited from doing. As such, the deposition should be rescheduled as requested while these discovery issues can be resolved and the CIPA questions litigated.

Respectfully submitted,

ZACARIAS MOUSSAOUI

By: 181  
Frank W. Dunham, Jr.  
Edward B. MacMahon, Jr.  
Alan Yamamoto  
Standby Counsel for Defendant

**Attachments Remain Classified**

## CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2002, this classified pleading, along with the referenced attachment, were filed with Christine Gunning or her representative with the U.S. Department of Justice and through her, a copy of same was delivered by hand to the Chambers of U.S. District Judge Leonie Brinkema and to the U.S. Attorney's Office, Alexandria Division, Alexandria, Virginia.

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Edward B. MacMahon, Jr.