

FILED WITH
COURT SECURITY OFFICER
[Signature]
DATE 12/9/2002

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

UNITED STATES OF AMERICA)
)
 v.) Criminal No. 01-455-A
)
 ZACARIAS MOUSSAOUI) TOP SECRET CLASSIFIED
) FILING/UNDER SEAL

STANDBY COUNSEL'S RESPONSE TO GOVERNMENT'S STATUS REPORT
CONCERNING DEFENDANT'S REQUEST FOR ACCESS TO [REDACTED]

On October 2, 2002, this Court ordered the government, by December 2, 2002, to provide a report as to the status of defense requests for access [REDACTED]

[REDACTED] The same deadline was subsequently imposed for defense requests for access [REDACTED].³ On December 2, 2002, the government filed the required report (the "Government's Status Report"), but it discloses virtually nothing new and is no more than a suggestion that the Court continue to postpone consideration of the defense requests for an additional forty-five days. This suggestion is unacceptable and should be rejected.

¹ Pursuant to the Court's Order of October 3, 2002, on December 9, 2002, a copy of this pleading was provided to the Court Security Officer for submission to a designated classification specialist who will "portion-mark" the pleading and return it to standby counsel. A copy of this pleading will not be provided to Mr. Moussaoui until standby counsel receive confirmation from the classification specialist that they may do so.

² See Oct. 2, 2002 Transcript of CIPA Hearing Before the Honorable Leonie M. Brinkema at 47 (filed Oct. 4, 2002) ("In 60 days, I expect a report from the government . . ."). See also *id.* at 37, 38; Order from U.S. District Judge Leonie M. Brinkema at 1 (filed Oct. 25, 2002) (ordering the prosecution by December 2, 2002 to "advise the Court as to the status of defense requests for access [REDACTED]"); [REDACTED]

³ See Order from U.S. District Judge Leonie M. Brinkema at 1 (filed Oct. 25, 2002) (ordering that "the United States respond to the defendant's request for access [REDACTED] by Monday, December 2, 2002").

The defense, either through Mr. Moussaoui or his standby counsel, has been seeking access

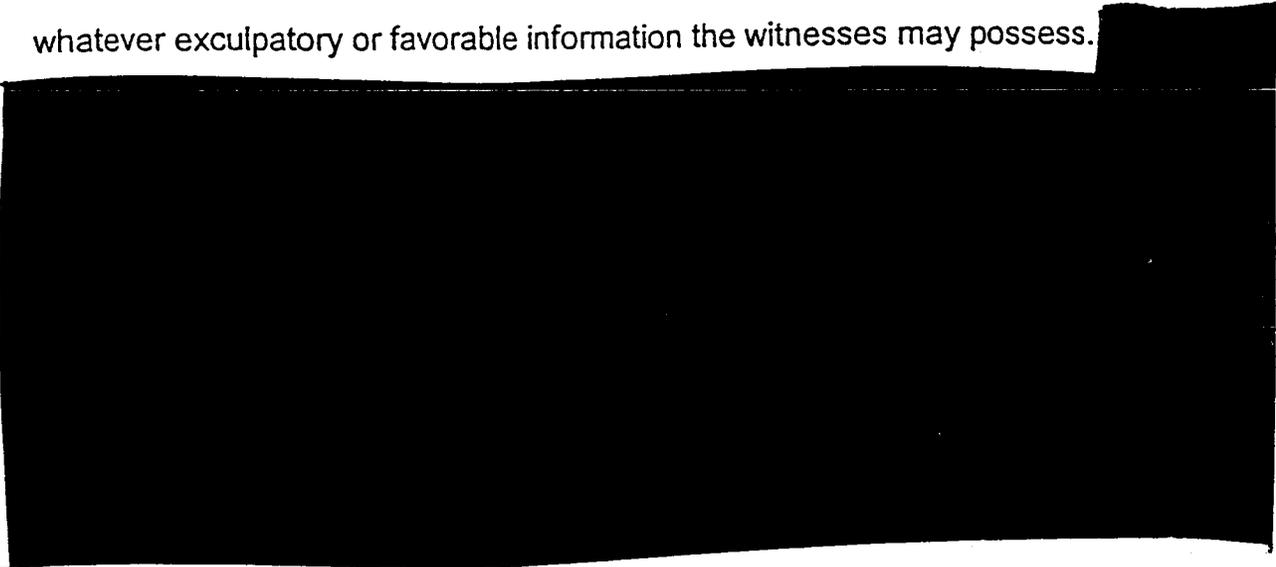
The government has consistently rebuffed defense efforts to gain access to these key witnesses, either by outright refusal,⁵ or by persuading the Court that, like it is doing here, it needs more time to respond to the requests for access.⁶

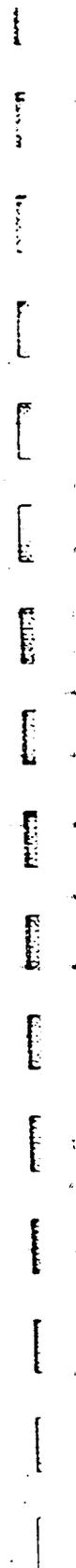
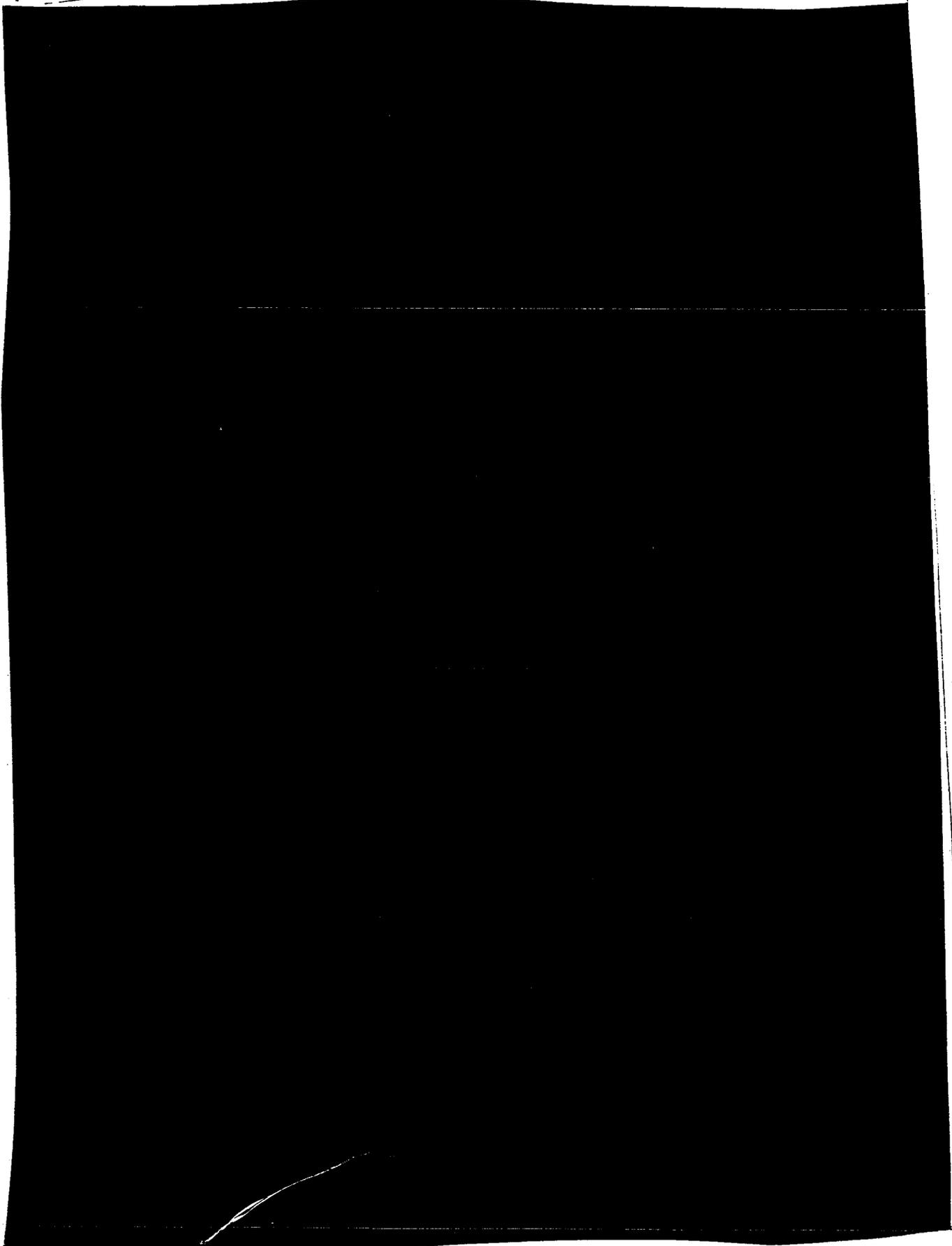
Further, no member of the defense team has been provided with any information

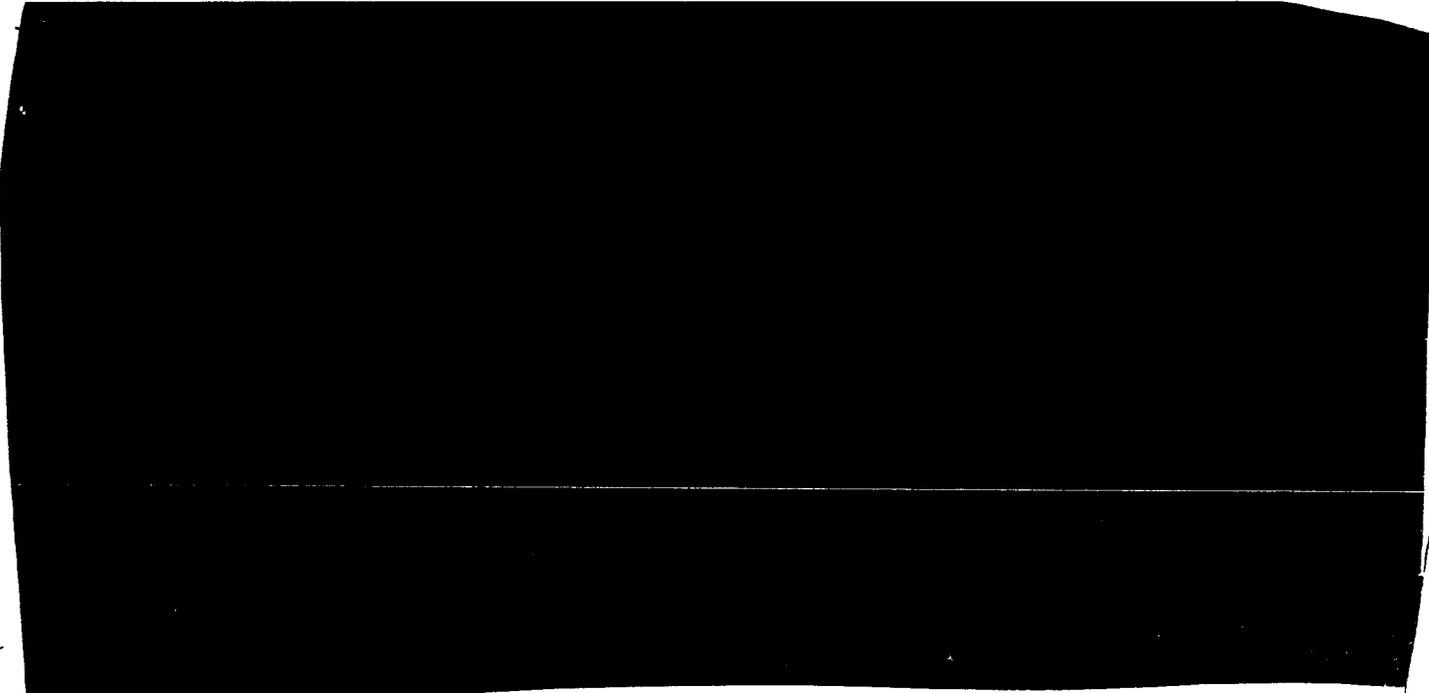
while denying the defense any access to these witnesses. For reasons previously

stated,⁷ this is fundamentally unfair to Mr. Moussaoui and violates his rights under the Fifth, Sixth and Eighth Amendments to the U.S. Constitution.

Moreover, there is a concern that further postponement of consideration of defense requests for access will seriously jeopardize standby counsel's ability to elicit whatever exculpatory or favorable information the witnesses may possess.

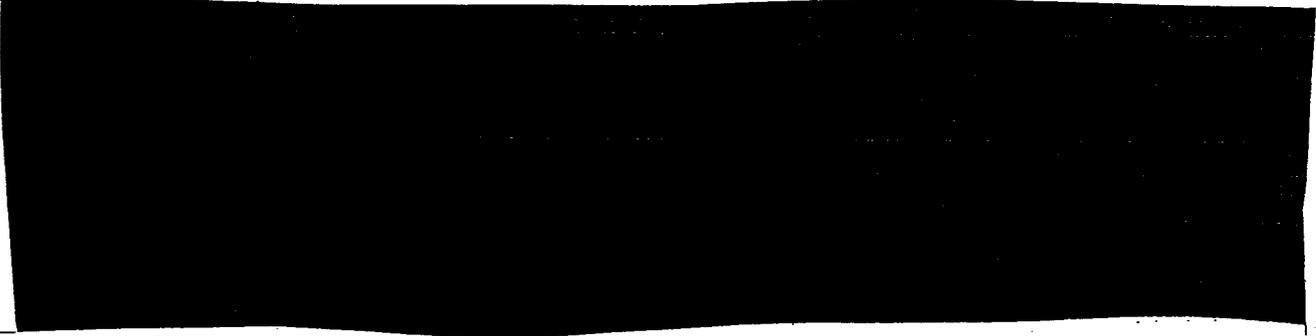






If this prosecution is to be fair, immediate access also should be granted to Mr. Moussaoui or his standby counsel.¹²

Moreover, as to defense access, , that issue has been fully briefed and is, with some limited exception,¹³ now ripe for oral argument, if any, and decision. The motions to gain access  have been filed, the government has filed its



¹³ Mr. Moussaoui has not yet been served with a copy of standby counsel's Reply to the Government's Response to the defense motions for access . On November 27, 2002, a copy of that Reply was provided to the Court Security Officer for submission to a designated classification specialist who will "portion-mark" the pleading and return it to standby counsel. A copy of that pleading will be provided to Mr. Moussaoui once standby counsel receive confirmation from the classification specialist that they may do so. Mr. Moussaoui may wish to supplement his previous filings on this issue once he receives the Reply.

response to those motions, and standby counsel have filed their reply.¹⁴

[REDACTED] no explanation or justification as to why further time is needed has been provided. No further pleadings with respect to [REDACTED] are necessary for the court to render a decision with the exception of any further input from Mr. Moussaoui based on the reply filed by standby counsel.¹⁵

Moreover, the issue of access [REDACTED] can and should be decided now because should access be granted, the result would not be a simple one hour witness interview.

CONCLUSION

Accordingly, standby counsel move the court to deny the government's request to further delay consideration of the motions for pre-trial and trial access [REDACTED]

¹⁵ See note 13 *supra*.

Attachments Remain Classified

[REDACTED] and grant to Mr. Moussaoui and standby counsel immediate access to these witnesses.

ZACARIAS MOUSSAOUI

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Standby Counsel's Response to Government's Status Report Concerning Defendant's Request for Access [REDACTED] was served upon AUSA Robert A. Spencer, AUSA David Novak and AUSA Kenneth Karas, U.S. Attorney's Office, 2100 Jamieson Avenue, Alexandria, VA 22314, by hand-delivering a copy to the Court Security Officer on this 9th day of December 2002.

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Kenneth P. Troccoli