

FILED WITH
COURT SECURITY OFFICER
Ms. Lewis
DATE 1/15/03

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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) ~~SECRET CLASSIFIED~~
) FILING/UNDER SEAL

STANDBY COUNSEL'S MOTION TO DISCLOSE DECLARATIONS¹

By Order dated December 30, 2003, the Court granted the Government's December 18, 2002 Motion to Reconsider the Court's December 13, 2002 Order to disclose the "Spencer Declaration" that was filed *ex parte* with the Court in support of the Government's December 2, 2002 Status Report Concerning Defendant's Requests for Access [REDACTED]. In the December 30 Order, the Court ruled that it "would determine whether the Spencer Declaration must be produced" after "review [of] the United States' January 9, 2003 filing." That filing has now been made. Accordingly, standby counsel renew their request for disclosure to them of the Spencer Declaration.

In addition, in order to more fully address the materiality issue to which the Declarations relate, and for the reasons stated in Standby Counsel's Opposition to the Government's Motion to Reconsider Order to Disclose Declaration (filed Dec. 24, 2002), standby counsel move for immediate disclosure of all of the "Declarations" filed *ex parte*

¹ Pursuant to the Court's Order of October 3, 2002, on January 15, 2003, a copy of this 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 standby counsel. A copy of this pleading, in redacted form or otherwise, will not be provided to Mr. Moussaoui until standby counsel receive confirmation from the CSO and/or classification specialist that they may do so.

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by the Government relating to the witness access issue, including, but not necessarily limited to, the following:²

1. Spencer Declaration dated January 13, 2003 filed in support of the Government's Consolidated Response in Opposition to Defense Motions for Pretrial Access and for Writs *Ad Testificandum* [REDACTED] [REDACTED] the "Government's Consolidated Response"). See *id.* at 25, 52-53, 55-56.
2. Karas Declaration filed in support of the Government's Consolidated Response. See *id.* at 40, 44, 59.
3. [REDACTED] filed in support of the Government's Consolidated Response. See *id.* at 21.
4. [REDACTED] filed in support of the Government's Response to Defendant's and Standby Counsel's Motions for Access [REDACTED] and a Writ *Ad Testificandum* [REDACTED] Testimony at Trial (filed Oct. 1, 2002) ("Government's Oct. 1 Response"). See *id.* at 2. See also Government's Consolidated Response at 21.
5. Karas Declaration filed in support of the Government's Oct. 1 Response. See *id.* at 4, n.1.

² To the extent that the government may believe that the protections set forth in Section 4 of the Classified Information Procedures Act apply to the Declarations (see Government's Motion to Reconsider Order to Disclose Declaration at 4-5 (filed Dec. 18, 2002)), we note that the government has not invoked those protections.

6. *Ex Parte* Classified Submissions filed in support of Government's Request to Postpone Consideration of Defendant's Request for Access [REDACTED]

[REDACTED] See *id.* at 1.

CONCLUSION

For the foregoing reasons, and any others adduced at a hearing on this motion, standby counsel move for immediate disclosure to them of all of the "Declarations" filed *ex parte* by the Government relating to the witness access issue.

ZACARIAS MOUSSAOUI

By Standby Counsel

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~~Frank W. Dunham, Jr.~~
Federal Public Defender
Gerald T. Zerkin
Senior Assistant Federal Public Defender
Kenneth P. Troccoli
Anne M. Chapman
Assistant Federal Public Defenders
Eastern District of Virginia
1650 King Street, Suite 500
Alexandria, VA 22314
(703) 600-0800

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~~Judy Clarke~~
Federal Defenders of
San Diego, Inc.
255 Broadway, Suite 900
San Diego, CA 92101
(703) 600-0855

181

~~Edward B. MacMahon, Jr.~~
107 East Washington Street
P.O. Box 903
Middleburg, VA 20117
(540) 687-3902

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~~Alan H. Yamamoto~~
108 N. Alfred Street
Alexandria, VA 22314
(703) 684-4700

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Standby Counsel's Motion to Disclose Declarations 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 of same to the Court Security Officer on this 15th day of January 2003.

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~~_____
Kenneth P. Troccoli~~