

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

FILED

UNITED STATES OF AMERICA)
)
 v.) Case No: 01-455-A
)
 ZACARIAS MOUSSAOUI)

2004 MAY 17 A 9 18
CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

GOVERNMENT'S NON-CONFIDENTIAL MEMORANDUM ACCOMPANYING ITS
MOTION FOR A PROTECTIVE ORDER PROVIDING PROSPECTIVELY FOR FILING
DOCUMENTS UNDER SEAL PURSUANT TO LOCAL RULE 49(E)

The United States, pursuant to Local Rule 49(E) of the Local Criminal Rules for the United States District Court for the Eastern District of Virginia, asks for an Order sealing the documents attached to its Motion to Seal.

I. ITEMS TO BE SEALED AND NECESSITY FOR SEALING

1. The government asks the Court to seal the documents attached to its Motion to Seal.
2. Sealing is necessary because premature disclosure of those documents described above would prematurely identify and possibly place a witness in this case in jeopardy. The government has considered procedures other than sealing and none will suffice to protect this information from disclosure. In addition, the Court has sealed analogous documents in like situations previously in this case.

II. REFERENCES TO GOVERNING CASE LAW (Local Rule 49(B)(2))

3. The Court has the inherent power to seal materials submitted to it. See United States v. Wuagneux, 683 F.2d 1343, 1351 (11th Cir. 1982); State of Arizona v. Maypenny, 672 F.2d 761, 765 (9th Cir. 1982); Times Mirror Company v. United States, 873 F.2d 1210 (9th Cir. 1989); see also Shea v. Gabriel, 520 F.2d 879 (1st Cir. 1975); United States v. Hubbard, 650 F.2d

1164

293 (D.C. Cir. 1980); In re Braughton, 520 F.2d 765, 766 (9th Cir. 1975). “The trial court has supervisory power over its own records and may, in its discretion, seal documents if the public’s right of access is outweighed by competing interests.” In re Knight Pub. Co., 743 F.2d 231, 235 (4th Cir. 1984). Sealing is appropriate where there is a substantial probability that the release of the sealed documents would compromise the government’s on-going investigation severely. See e.g. In re Search Warrant for Secretarial Area Outside Office of Gunn, 855 F.2d 569, 574 (8th Cir. 1988); Matter of Eye Care Physicians of America, 100 F.3d 514, 518 (7th Cir. 1996); Matter of Flower Aviation of Kansas, Inc., 789 F.Supp. 366 (D. Kan. 1992).

III. PERIOD OF TIME GOVERNMENT SEEKS TO HAVE MATTER REMAIN UNDER SEAL (Local Rule 49(D)(4))

4. The materials to be filed under seal would need to remain sealed until trial in this case.

5. Upon trial in this case, pursuant to Local Rule 49(B)(3), the sealed materials will be automatically unsealed and handled as such.

WHEREFORE, the United States respectfully requests that a Protective Order be entered allowing the United States to prospectively file documents under seal.

Respectfully submitted,

Paul J. McNulty
United States Attorney

By: RS/
Robert A. Spencer
Assistant United States Attorney