

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)
 a/k/a "Shaqil,")
 a/k/a "Abu Khalid)
 al Sahrawi,")
)
 Defendant.)

ORDER

Before the Court is standby defense counsel's Motion to Unseal (Docket #500) in which they seek an order unsealing all correspondence, pleadings and orders regarding the United States' inadvertent production of classified materials to the defendant.¹ Standby counsel argue that these letters, pleadings and orders have been maintained under seal solely to shield the United States from embarrassment. In response, the United States argues that the correspondence, pleadings and orders should remain under seal to protect the information contained in the materials mistakenly produced to the defendant.

The classified materials have been retrieved and are now properly classified. Moreover, the United States actually disclosed the classified nature of the materials erroneously produced to the defendant in its Response to Standby Counsel's

¹In this motion, standby counsel also seek to unseal pleadings regarding a separate issue, which we will address at a later time.

Motion to Unseal.² Therefore, the original justification for maintaining under seal the correspondence, pleadings and orders regarding this issue no longer has merit.³ Lastly, according to news reports by ABC and CNN dated September 6 and 7, 2002, Department of Justice sources leaked to the media information about the inadvertent production of classified materials to the defendant and efforts to retrieve the same. For these reasons, and in light of the strong public policy favoring open records in criminal proceedings, we find no legitimate reason to maintain under seal the correspondence, pleadings and orders regarding the inadvertent production of classified material to the defendant. Accordingly, standby counsel's Motion to Unseal (Docket #500) is GRANTED in part;⁴ and it is hereby

ORDERED that the orders docketed as #s 452, 462, 479, 483, 485 and 487 and the correspondence to which the orders respond be and are unsealed subject to necessary redactions to protect information which might identify the particular classified

² Standby counsel's Motion to Unseal and the United States' Response were both filed under seal and sent to the pro se defendant.

³ Although the defendant was aware that the United States had inadvertently produced certain materials to him, Mr. Moussaoui had not been explicitly informed that he had been in possession of classified information until he received the Government's Response to Standby Counsel's Motion to Unseal.

⁴ See supra footnote 1.

materials at issue.⁵ Because standby counsel's Motion to Unseal addresses another issue not yet resolved, the Motion to Unseal (without attachments)(Docket #500), the Government's Response (Docket #526), and standby counsel's Reply (without attachments)(Docket #534) are to be unsealed in redacted form.

The Clerk is directed to forward copies of this Order to the defendant, pro se; counsel for the United States; standby defense counsel; and the Court Security Officer.

Entered this 26th day of September, 2002.

/s/

Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

⁵The correspondence which led to the issuance of the various orders is attached to this Order. Pursuant to our Order of August 29, 2002, the defendant's pro se Motion to Expulse [sic] the United States from the Arabian Discovery Cave (Docket #458) will not be unsealed.