

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

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 01-455-A
)	Hon. Leonie M. Brinkema
ZACARIAS MOUSSAOUI,)	
a/k/a “Shaqil,”)	
a/k/a “Abu Khalid al Sahrawi,”)	
)	
Defendant)	

GOVERNMENT’S MOTION PURSUANT TO THE “JUSTICE FOR ALL ACT”

The United States respectfully requests that the Court enter an order pursuant to the “Justice for All Act of 2004,” 18 U.S.C. § 3771(d)(2), allowing the Government to call a reasonable number of victims, as described below, to testify during the selection portion of the penalty phase of this case, instead of allowing all of the victims who have requested to testify to do so.

The Government has notified the defendant that it intends to rely on “victim-impact” evidence as a non-statutory aggravating factor. See Notice of Intent to Seek a Sentence of Death (docket no. 89), Section III, ¶¶ 2-4. Under the Court’s Order dated November 14, 2005, in which the Court bifurcated the penalty phase, the Government would introduce the “victim-impact” evidence during the second portion of the penalty phase. In the normal capital murder case, the Government generally offers multiple witnesses (parents, spouse, children, friends) who testify during the penalty phase about the impact of the loss of the victim. See Payne v. Tennessee, 501 U.S. 808 (1991).

The Justice for All Act of 2004 (hereafter “the Act”), signed into law on October 30, 2004, provides for certain rights to victims in federal criminal proceedings. One such right

requires that victims be afforded an opportunity “to be reasonably heard at any public proceeding in the district court involving . . . sentencing” 18 U.S.C. § 3771(a). The Act defines a crime victim as “ a person directly and proximately harmed as a result of the commission of a Federal offense” 18 U.S.C. § 3771(e).

Importantly, the Act authorizes the Court in cases involving a large number of victims, such as the current case, to adopt procedures that will not unduly interfere with the criminal proceedings. Specifically, 18 U.S.C. § 3771(d)(2) provides:

(2) Multiple crime victims. — In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

The Government respectfully requests that the Court invoke § 3771(d)(2) for purposes of the penalty phase of this case due to the large number of victims. As the Court well knows, this prosecution involves the largest loss of life (2,972 lives) resulting from a criminal act in American history. Thousands more were injured, many very seriously from burn wounds.

Throughout the litigation of this case, the Government has made unprecedented efforts to protect the rights of its victims in this case. For example, we have notified all victims in our database (approximately 8,000 persons) of all significant events by way of mass mailings. More important for purposes of this motion, we have interviewed every victim who has requested us to do so about the impact of the crime on their lives. During that process, several hundred victims expressed a desire to testify about the impact of the crime during the penalty phase of this case. The Government believes that having several hundred victims testify during the penalty phase would both unduly complicate and prolong the proceedings and, therefore, is impracticable. See

18 U.S.C. § 3771(d)(2).

Consistent with § 3771(d)(2), the Government proposes an alternative to calling all victims who want to testify during the penalty phase. Although we intend to identify every victim murdered on September 11, 2001, by both name and photograph (if the Government has been able to obtain a photograph) during the selection portion of the penalty phase, we intend to put forth testimony telling the story of approximately 45 victims for victim impact purposes.¹ We believe that 45 stories of victim impact represents a reasonable sample — less than one percent of all of those murdered or injured on September 11, 2001 — to convey properly the devastation caused on that infamous day. The representative sample includes a cross-section from each of the four flights, from the World Trade Center, and from the Pentagon. Moreover, the representative sample includes a diversity in terms of race, religion, economic status and occupation, and also in terms of relationship to the victim (i.e., spouse, parent, sibling, child, friend, etc.). The representative sample also includes victims who were injured, representing the thousands injured during the attacks. In the Government's view, a representative sample of approximately 45 victims is the minimum amount of victim impact testimony necessary to convey the unprecedented level of death and injury caused on September 11, 2001, without unduly complicating or prolonging the selection portion of the penalty phase.²

¹ We say approximately 45 victims because some witnesses lost multiple loved ones and they will testify to impact of the loss of all of their loved ones. Thus, we expect the number of actual witnesses who testify purely about victim-impact to be less than 45. Moreover, unlike other murder cases, we intend to have only one witness testify about the impact of the loss of a single victim.

² We have repeatedly informed the victims that we intend to proceed in this manner.

CERTIFICATE OF SERVICE

I certify that on the 6th day of December, 2005, copies of the foregoing
Government pleading was served, by facsimile and regular mail, on the following counsel:

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