

FILED WITH
COURT SECURITY OFFICER
DATE 1/24/2006

[REDACTED]

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

UNITED STATES OF AMERICA)

v.)

ZACARIAS MOUSSAOUI)

Criminal No. 01-455-A
Hon. Leonie M. Brinkema

**DEFENDANT'S FIFTH SUPPLEMENTAL STATUS REPORT
ON HIS CIPA SECTION FIVE DESIGNATIONS**

Defendant, Zacarias Moussaoui ("Moussaoui"), through counsel, and pursuant to the Court's instructions from the CIPA hearing held on January 5, 2006, herewith files this Fifth Supplemental Status Report on his CIPA Section Five Designations.

I. Overview

During the CIPA hearing held on January 5, 2006, the Court instructed the defense to re-review its designations with respect to two categories of documents, provide greater specificity of the information within those documents that the defense may reasonably seek to disclose, and eliminate those documents that may be considered cumulative. These two categories, the Court instructed, should be re-reviewed within a week; all other documents were to be re-reviewed on a rolling basis thereafter.

As instructed, on January 12, 2006, Defendant provided the Court and the Government with his re-review of the initial two categories of documents, as well as

[REDACTED]

[REDACTED]

II.

[REDACTED]

Documents falling within this category [REDACTED] evidence that the defense reasonably expects to disclose in the second phase of the trial. Approximately 21 (in full or in part) designations fall into this category. [REDACTED] The defense has re-reviewed these designations and is herewith withdrawing 5 designations [REDACTED] in this category because they are cumulative or not needed.

Appended hereto, is a classified notebook of all of the remaining 16 designated documents that remain active in this category, organized by CIPA number. [REDACTED] The CIPA number is written in the top right corner of each document. Also, at the front of the notebook is a Sub-Chart showing the status of all of Moussaoui's § 5 designations, organized by CIPA number, for every document falling within this category.⁶ That chart also identifies the specific information that the defense reasonably expects to disclose under CIPA § 5. Additional documents within this category may be withdrawn as the Government provides the defense with additional declassified versions.



⁶ This sub-chart is drawn, in large part, from Defendant's Chart of the Status of his CIPA § 5 Designations which was appended to Defendant's First Supplemental Status Report on his CIPA Section Five Designations (filed Dec. 16, 2005, dkt. no. 1423).

[REDACTED]

III.

Documents falling within this category are relevant.

[REDACTED]

Approximately 48 designations fall into this category. The defense has re-reviewed these designations and is therewith withdrawing 15 designations in this category because they are cumulative/not needed or because a declassified version is acceptable.

Appended hereto, is a classified notebook of all of the remaining 33 designated documents that remain active in this category, organized by CIPA number. The CIPA number is written in the top right corner of each document. Also, at the front of the notebook is a Sub-Chart showing the status of all of Moussaoui's § 5 designations, organized by CIPA number, for every document falling within this category. That chart also identifies the specific information that the defense reasonably expects to disclose under CIPA § 5. Additional documents within this category may be withdrawn as the Government provides the defense with additional declassified versions.

[REDACTED]

[REDACTED]

[REDACTED]

IV. Remaining Designations

Appended hereto is a classified notebook with the latest version of Defendant's Master Chart of the Status of his CIPA § 5 Designations which contains the status of all of Defendant's designations, including ones not addressed in the instant pleading or any of the sub-charts. The Master Chart also updates some of the designations in the sub-charts based on information since received in the Government's Initial CIPA Section 6 Response (filed Jan. 17, 2006, dkt. no. 1458). Below are additional comments on some other categories of designated documents.

A. Post-9/11 [REDACTED] statements from ECWs and other [REDACTED]

Approximately 21 of Defendant's CIPA § 5 designations consist of post-9/11

statements from certain enemy combatant witnesses
[REDACTED]

[REDACTED]

[REDACTED]

All of these ECW statements, but one, are the subject of pending litigation before the Court. [REDACTED]

[REDACTED] The defense has proposed substitutions for these ECWs and, as indicated in previous filings with the Court, should the Court agree to those substitutions, then, barring some unforeseen circumstance, nearly all of these documents will no longer be needed and the § 5 designations for them will be withdrawn. The few documents that still may be needed [REDACTED] and the master chart specifies the information in those designations that the defense reasonably expects to disclose.

B. [REDACTED]

Approximately 9 of Defendant's CIPA § 5 designations consist [REDACTED] addressing a variety of topics and spanning a number of relevance categories. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Except where indicated in the master chart, the entirety of these documents may reasonably be disclosed at trial.

C. [REDACTED]

On January 18, 2006, the Government produced additional classified documents

[REDACTED]

The next day, the defense notified the Government of the particular portions of those documents needed under § 5. The attached master chart provides the latest status of these designations.

Also, on January 21, 2006, the Government produced three boxes of *Jencks* and *Giglio* material in hard copy, videocassettes, and/or computer diskettes. Two of the boxes (one for the first phase of the trial and one for the second) contain unclassified material, and the third box (for phase 1) contains material that is classified. This latter box of documents, being just recently received, will be addressed in subsequent filings with the Court.

[REDACTED]

D.

[REDACTED]

This morning, the Government produced additional classified discovery

[REDACTED]

These documents are relevant

[REDACTED]

and have

been designated today

The Government has indicated that

it is still checking

[REDACTED]

[REDACTED]

will be designated if and when it

is received.

Conclusion

The defense believes that the above information will significantly advance the CIPA process in this case. The defense is prepared, at the Court's convenience, for additional CIPA proceedings with respect to the above documents.

Respectfully Submitted,
Zacarias Moussaoui

By Counsel

[REDACTED]

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January 2006, a true copy of the foregoing pleading was served upon AUSA Robert A. Spencer, AUSA David J. Novak and AUSA David Raskin, U.S. Attorney's Office, 2100 Jamieson Avenue, Alexandria, VA 22314, by hand-delivering a copy of same to the Court Security Officer.¹¹

/s/
Kenneth P. Troccoli

In accordance with the Court's Order of October 3, 2002 (dkt. no. 594), on the date that this pleading was filed, a copy of the 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 defense counsel. A copy of this pleading, in redacted form or otherwise, will not be provided to Magistrate Judge [redacted] until counsel receive confirmation from the CSO and/or classification specialist that they may do so.