

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

2005 MAR 28 P 1:40

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA
Criminal No. 01-455-A

UNITED STATES OF AMERICA,)
)
v.)
)
ZACARIAS MOUSSAOUI,)
)
Defendant.)

**DEFENDANT'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 Defendant, Zacarias Moussaoui, by counsel and 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 document attached to this Motion to Seal.

I. Items to be Sealed and Necessity for Sealing

1. The defendant asks the Court to seal the document attached to his Motion to Seal.
2. Sealing is necessary in order to protect the identity of witnesses, as required by the Court. Counsel for the defendant has considered procedures other than sealing and none will suffice to protect this information from disclosure.

II. Previous Court Decisions Which Concern Sealing Documents

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 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 document would compromise the defendant's theories of his defenses to the prosecution. *See e.g., In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569 (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 to Have the Document Under Seal

4. The materials to be filed under seal would need to remain sealed until the witnesses and evidence at issue in the motion are presented to the jury.

5. Upon presentation of the witnesses and evidence at issue in this motion, the sealed materials will be automatically unsealed and handled as such.

WHEREFORE, the Defendant respectfully requests that an Order be entered allowing the document attached to his motion to be placed Under Seal. An appropriate Order is attached.

Respectfully submitted,

ZACARIAS MOUSSAOUI
By Counsel

/s/

Gerald T. Zerkin
Sr. 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

/s/

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

/s/

Alan H. Yamamoto
643 South Washington Street
Alexandria, VA 22314
(703) 684-4700

CERTIFICATE OF SERVICE

I hereby certify that by hand-delivery on this 28th day of March 2006, a true copy of the foregoing Notice, Motion, and Memorandum 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.

/s/

Anne M. Chapman