

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

UNITED STATES OF AMERICA,)	
)	Criminal No. 01-455-A
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 prevent the Defense from revealing privileged information and mental health evaluations. 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.

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/
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CERTIFICATE OF SERVICE

I hereby certify that by hand-delivery on this 3rd day of April 2006, a true copy of the foregoing 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