

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

The defendant, pro se, has filed a Motion to Get Access to So Called Secret Evidence (Docket #385).¹ He repeats this request in pleadings docketed as #s 386, 395 and 446. The United States opposes this motion arguing that significant security concerns justify denying the defendant access to classified material in this case, and that the defendant's Fifth and Sixth Amendment rights are not violated by denying him access to such information. Further, the United States contends that the defendant understood that he would not have access to classified material when he exercised his Farella right to represent himself.

The Court's January 22, 2002 Protective Order prohibits the defendant from accessing classified information unless he first

¹ Standby counsel have sought similar relief in their Motion for Access by Defendant to Classified and Sensitive Discovery and for Relief from Special Administrative Measures Concerning Confinement (Docket #165) and their Motion in Support of Defendant's Requests for Access to Evidence, Access to Secure Website and for a Continuance (Docket #396).

obtains the necessary security clearance from the Department of Justice, or other governmental or Court approval. (Protective Order at ¶ 11). The Court may not grant the defendant access to classified discovery unless the Court is satisfied that there is a "need to know" the particular information. (Id.)

Unlike the usual case involving classified discovery in which a defendant charged with espionage has previously possessed the classified information at issue, Mr. Moussaoui is charged with conspiracy to commit acts of terrorism transcending national boundaries among other offenses. As the Government strenuously argues, the defendant's repeated prayers for the destruction of the United States and the American people, admission to being a member of al Qaeda, and pledged allegiance to Osama Bin Laden are strong evidence that the national security could be threatened if the defendant had access to classified information. Therefore, we find that the United States' interest in protecting its national security information outweighs the defendant's desire to review the classified discovery. We further conclude that Mr. Moussaoui's Fifth and Sixth Amendment rights are adequately protected by standby counsel's review of the classified discovery and their participation in any proceedings held pursuant to the Classified Information Procedures Act ("CIPA"), 18 U.S.C. App. 3, even though the defendant will be excluded from these proceedings. See United States v. Bin Laden, 2001 U.S. Dist.

LEXIS 719 (S.D.N.Y. Jan. 25, 2001). Lastly, the United States has declassified or is in the process of declassifying a large number of the documents identified in standby counsel's "designation." Presumably, the defendant has had or will have access to the declassified discovery so long as it is not subject to a separate protective order. Accordingly, the defendant's repetitive motions for access to classified discovery (Docket #s 385, 386, 395 and 446) and standby counsel's similar requests (Docket #s 165 and 396) are DENIED; and it is hereby ORDERED that the defendant be excluded from any CIPA proceedings.

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 23rd day of August, 2002.

/s/

Leonie M. Brinkema
United States District Judge

Alexandria, Virginia