

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

Before the Court is Intervenors' Motion for Access to Certain Portions of the Record (Docket #514), in which they request a modification of our Order of August 29, 2002 regarding the sealing of the defendant's pro se pleadings. Intervenors argue that the Order is broader than necessary to protect the Government's legitimate interest in limiting the defendant's ability to communicate with co-conspirators or sympathizers. Specifically, the intervenors suggest that the defendant's pro se pleadings be provisionally sealed for a maximum of ten days, and thereafter placed in the public record unless the government satisfies the Court that compelling interests justify maintaining the pleadings under seal.

In response, the United States insists that maintaining all of the defendant's pro se pleadings under seal is the least restrictive means of ensuring that he does not communicate coded messages to the outside world. Rather than adopt the intervenors' proposed modification of our Order of August 29,

2002, the United States suggests that we direct the Clerk of Court not to file any of Mr. Moussaoui's pleadings "containing threats, racial slurs, calls to action, attempts to communicate messages to someone other than this Court, or other irrelevant or inappropriate language."

Sealing records or portions thereof in criminal cases is justified only if such an accommodation is narrowly tailored to serve compelling interests. See Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 510 (1984); In re Knight Publishing Co., 743 F.2d 231, 234 (4th Cir. 1984). In our view, the United States' proposal does not properly balance the defendant's right to seek appropriate judicial relief against the public's right to access records in criminal cases and the United States' legitimate concerns about the defendant's efforts to communicate with the outside world. See In re Washington Post Co., 807 F.2d 383, 392 (4th Cir. 1986); In re Knight Publishing Co., 743 F.2d at 234.

In light of the defendant's admitted membership in al Qaeda, repeated pledges of allegiance to Osama bin Laden and prayers for the destruction of the United States, we find the United States' concerns about the defendant's efforts to communicate messages to his "people" through his court filings to be legitimate. However, since we issued our Order of August 29, 2002, the defendant has filed fewer pleadings and has significantly toned down his inappropriate rhetoric. We, therefore, find that the

administrative burden on the United States of identifying and redacting problematic language from the defendant's pro se filings no longer justifies a total sealing of all of the defendant's pleadings.

Because the Court is not qualified to determine whether the defendant is attempting to send messages to sympathizers or otherwise improperly communicate with the outside world, we must rely on the Government and its intelligence community to identify language in the defendant's pro se pleadings that might endanger national security. Unless there is a compelling reason to conclude otherwise, we will defer to the Government's expertise on this issue. Accordingly, the Intervenors' Motion for Access to Certain Portions of the Record (Docket #514) is GRANTED; and it is hereby

ORDERED that our Order of August 29, 2002 be and is modified to the following extent: All of the defendant's pro se pleadings will continue to be initially filed under seal. The United States will have ten days from the date a pleading is filed to advise the Court in writing whether the pleading should remain under seal or be unsealed with or without redactions. If it requests redactions, the United States need only submit a copy of the pro se pleading marked with the proposed redactions along with a brief written explanation of the reasons for the proposed redactions. If the United States does not so advise the Court,

the pleading at issue will be unsealed without redaction;¹ and it is further

ORDERED that counsel for the United States advise the Court in writing by 5:00 p.m. on Monday, October 7, 2002 of its position as to the unsealing or redaction of the defendant's pleadings docketed as #s 467, 469, 470, 471, 472, 491, 497, 498, 536, 537, 570 and 577.

The Clerk is directed to forward copies of this Order to the defendant, pro se; counsel for the United States; standby defense counsel; and counsel for the intervenors.

Entered this 27th day of September, 2002.

/s/

Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

¹ The Court will also conduct its own review of the defendant's pro se pleadings, and will redact any insulting, threatening or inflammatory language which would not be tolerated from an attorney practicing in this court. Should the defendant's pleadings again become replete with inappropriate rhetoric, we will return to categorical sealing.