



U.S. Department of Justice

United States Attorney
Eastern District of Virginia

2100 Jamieson Avenue
Alexandria, Virginia 22314

February 11, 2008

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US Court of Appeals
4th Circuit

Hon. Karen J. Williams
Chief Judge
United States Court of Appeals
for The Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23219-3517
(804) 916-2737

Hon. Leonie M. Brinkema
United States District Judge
Eastern District of Virginia
401 Courthouse Square
Alexandria, Virginia 22314-5799

Via Facsimile and Regular Mail

Re: U.S. v. Zacarias Moussaoui;
Fourth Circuit Docket No. 06-4494
District Court Case No. 01-455-A

Dear Chief Judge Williams and Judge Brinkema:

The Government respectfully writes to inform the Courts that in response to an inquiry from the United States House of Representatives' Permanent Select Committee on Intelligence ("Committee"), the Department of Justice has stated that it does not intend to restrict the Central Intelligence Agency ("CIA") from responding to the Committee's document requests. We advise both Courts because the CIA's response to the Committee's requests for documents could possibly include *ex parte* declarations previously submitted to the Courts in this case.

We attach for your review a copy of the letter from the Deputy Attorney General, dated February 7, 2008, responding to the Committee's inquiry regarding requests for documents, as well as other matters related to the Committee's investigation into the destruction by CIA personnel of videotapes of detainee interrogations.

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The Government will promptly apprise the Courts of any further developments.

Respectfully submitted,

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U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

February 7, 2008

The Honorable Silvestre Reyes
Chairman
Permanent Select Committee on Intelligence
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This follows up on our meeting of January 29, 2008, regarding the Committee's interest in conducting an investigation relating to the destruction by CIA personnel of videotapes of detainee interrogations while the Department, under the leadership of Acting United States Attorney John Durham, is conducting a criminal investigation relating to the same matter. On January 2, 2008, the Attorney General announced that he had designated Mr. Durham as the Acting United States Attorney for the Eastern District of Virginia for this purpose.

We understand that the Committee would like to interview CIA employees and other witnesses. We also understand the CIA has advised the Committee that it will not make employee witnesses available unless and until the Agency can use documents to prepare the witnesses for their interviews and testimony. We have asked the CIA not to engage in preparing these witnesses because we believe that this preparation by the very Agency whose conduct is under scrutiny would pose serious risks to the criminal investigation. In addition, the Committee had indicated that it wishes to show witnesses documents in connection with the interviews. As set forth in our letter to you, dated January 10, 2008, we believe that such steps would significantly impede our investigation by impairing our ability to obtain the independent recollections of these individuals and to assess the credibility of the witnesses and the accuracy of the records. These concerns are particularly acute at this early stage of the investigation.

Based upon our consultation with Mr. Durham, we have concluded that the Department cannot agree at this time to the Committee's proposed interviews, with or without the advance provision of documents to witnesses. In order to fulfill our law enforcement responsibilities, we believe it is important that Mr. Durham's investigation effectively precede other efforts to gather information from these witnesses. We fully respect the Committee's legitimate oversight interests in the CIA's destruction of these tapes. Our concern is only one of timing. It would appear that the limited delay that we request would not impair the Committee's ability to conduct a comprehensive oversight investigation of this matter. However, the Committee's interviewing witnesses, showing documents to witnesses, or publicly disclosing information at this time will irretrievably impair our ability to conduct the criminal investigation. For this reason, we reiterate

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our request that you defer witness interviews for now. We considered your suggestion that the Committee designate witnesses scheduled for interviews so that Mr. Durham could interview them in advance, but concluded that this procedure would essentially drive the conduct of Mr. Durham's investigation, which would not be appropriate.

Mr. Durham, of course, is aware of your interests, but we trust that you share our view that his investigation should not be impeded. We want to assure you that we expect Mr. Durham will proceed as expeditiously as possible consistent with his responsibility to conduct a thorough and impartial investigation. Although we cannot predict a date by which his efforts will progress to a point where the Committee's actions would no longer pose a risk to his investigation, we are hopeful that by April 7, 2008, we will be in a position to re-evaluate the concerns we have expressed. In sum, we are merely asking for an opportunity for the criminal investigation to proceed in a manner that is consistent with the interests of justice.

We also understand that the Committee would like to review interrogation tapes in the possession of the CIA pertaining to a specific individual. We do not believe that the Committee's review of these tapes will adversely impact pending matters within our purview. Therefore, we have no objection to your working with Special Counsel to the Director Robert Dietz to provide you with access to the requested tapes (or copies thereof) at the CIA on a confidential basis.

We have not and do not intend to restrict the CIA from responding to the Committee's document requests that are directed to Mr. Dietz. We are advised that Mr. Dietz has been designated as the official responsible for preparing the Agency's responses to the Committee's oversight requests. Since the CIA's Office of Inspector General (OIG) is and has been participating in Mr. Durham's investigation, however, we would object to requests directed to the OIG. Requests directed to the OIG would interfere with the law enforcement responsibilities of that Office, and we ask that you refrain from addressing requests to the OIG in the future. As noted above, we continue to request that the Committee maintain the confidentiality of information contained in documents made available by Mr. Dietz in order to avoid any disclosures to potential witnesses.

I appreciate your time in meeting with me and hope that our conversations were helpful. As I have said, we fully appreciate the Committee's legitimate oversight interests in the CIA's destruction of videotapes relating to detainee interrogations. That appreciation is reflected in our agreeing to your review of documents and the specific tapes you identified. However, we must continue to ask that you defer witness interviews. Please feel free to share this and my letter of

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January 10, 2008, with House leadership if there is any question about the possibility of deferring your investigation temporarily.

Sincerely,



Craig Morford
Acting Deputy Attorney General

cc: The Honorable Peter Hoekstra
Ranking Minority Member