

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee,)	
)	
v.)	No. 06-4494
)	
ZACARIAS MOUSSAOUI,)	
)	
Defendant-Appellant.)	

**UNITED STATES’S MOTION FOR AN
EXTENSION OF TIME WITHIN WHICH TO FILE ITS BRIEF**

Appellee, the United States of America, hereby respectfully moves this Court for an additional 60 days in which to file its brief in the above-captioned matter. The United States’s brief is currently due today, Thursday, July 3, 2008. This motion is based on new factual information that came to the attention of the attorneys supervising the preparation of the government’s brief within the last seven days. In support of this motion, the United States submits the following:

1. As this Court is aware, following a preliminary inquiry into the destruction by CIA personnel of videotapes of detainee interrogations, a criminal investigation into the matter was opened (the “tapes investigation”). On request of the United States Attorney for the Eastern District of Virginia, and in an abundance of caution, this office was recused from participating in the

tapes investigation. The Attorney General thereafter asked John Durham to serve as Acting United States Attorney for purposes of this investigation.

The independent tapes investigation is ongoing. As this Court is also aware, defendant-appellant Moussaoui has raised claims in his appeal relating to the destruction of tapes. *See, e.g.*, Br. at 108-12, 125-35. Further, before filing his direct-appeal brief, Moussaoui asked this Court for a limited remand so that the district court might “consider facts and issues relating to the existence and destruction of Detainee recordings.” *Id.* at 108 n.59. On January 16, 2008, after receiving briefing from both parties, this Court denied Moussaoui’s motion.

2. The Acting United States Attorney and his staff have very recently uncovered new information that may be relevant to the issues that were addressed in the remand proceeding and have been raised again on appeal. Within the last seven days, the Acting United States Attorney provided the substance of that information to attorneys in the Department of Justice who are supervising the preparation of the government’s appellate brief; the purpose of those disclosures was to enable the Department to ensure the accuracy of the government’s brief and the adequacy of representations made to this Court. That information has been updated with new disclosures based on the continuing investigation, including with new information

received today. The government has made a diligent effort to complete its brief on schedule, but the recent developments have created unforeseen complications that directly bear on the government's ability to do so.

3. Based on that very recently received information, the United States requests that this Court grant a 60-day extension within which to file its responsive direct-appeal brief. The United States believes that compelling reasons justify this extension. The extension is necessary to allow the Acting United States Attorney the necessary time to complete this particular phase of his investigation and to provide appropriate updated information to the Moussaoui appellate team; and then to allow the government's Moussaoui appellate team the necessary time (a) to determine, based on the tapes-investigation team's completed inquiry, what further disclosures are necessary and (b) to make appropriate legal argumentation based on the developed facts. Based on those circumstances, the United States submits that the requisite "extraordinary circumstances" to support this request for an extension exist. *See* Loc. R. 31(c).
4. The United States does not make this request lightly. The government recognizes that this 60-day extension may require this Court to remove the matter from its September 22, 2008, oral argument calendar, because the defendant must have an adequate opportunity to reply to the government's

brief. Nevertheless, given the incomplete nature of this particular phase of the ongoing tapes investigation conducted by the Acting United States Attorney, and the relationship between that investigation and issues raised by defendant-appellant, as well as the United States' obligation to provide this Court with accurate information and responsive legal argument on the issues involved in this appeal, the United States believes that a 60-day extension is necessary. In this regard, the United States submits that this motion presents the requisite "good cause" for any motion – such as this – that "would affect the argument date." *See* Loc. R. 34(c) ("After a case has been scheduled for oral argument, any motion that would affect the argument date must show good cause for the requested relief and that the relief could not have been requested within the period set by the Court for notice of conflicts."). The requested extension, moreover, will not prejudice defendant-appellant's rights; rather, permitting the extension will ensure that his claims are addressed in a fuller factual and legal context.

5. Counsel for Defendant-Appellant, Justin Antonipillai, Esq., has been informed of this motion pursuant to Local Rule 27(a). Mr. Antonipillai has indicated that he takes no position at this time.
6. The United States does not anticipate seeking any further extensions of time.

For the foregoing reasons, the United States respectfully requests that this Court allow the United States's brief to be filed **no later than September 3, 2008**. The United States further requests that this appeal be removed from this Court's September 22, 2008 oral argument calendar, and rescheduled to the earliest practicable date.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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