

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES,)	
Appellee,)	
vs.)	No. 06-4494
)	Crim No. 01-455-A
ZACARIAS MOUSSAOUI)	
Appellant.)	

**RESPONSE TO MOTION FOR EXTENSION
AND RENEWED MOTION FOR A LIMITED REMAND**

Appellant, Zacarias Moussaoui, by undersigned counsel, respectfully submits the following response to the Motion of the United States for an Extension of Time Within Which to File its Brief (Dkt. #196) and renews the Motion for Remand. (Dkt. #107.)

BACKGROUND

1. As this Court is aware, in October 2007, the Government disclosed that sworn declarations by the Central Intelligence Agency and representations by counsel for the United States, filed or made both to this Court and to the district court below, were incorrect. As disclosed in an October 25, 2007 letter, contrary to its prior declarations and representations, the Government has possessed, for several years, at least some videotapes or audiotapes of the interrogations of at least one al Qaeda operative who the district court held to be a material witness in Mr. Moussaoui's case.

2. On November 27, 2007, in light of the October 25 letter and other disclosures, Mr. Moussaoui moved for a limited remand. (Dkt. #107.) Mr. Moussaoui sought a remand so that the district court could review the facts, make findings of fact and conclusions of law, and put this Court in a position to reasonably review the same. The Government opposed the Motion to Remand and, in the next few months, made a number of disclosures that it had taped other interrogations and destroyed certain of those tapes. (Dkt. #110, 150.) Simultaneously, numerous media sources began publishing reports that the CIA destroyed “hundreds of hours” of videotapes of interrogations. (*See* Dkt. #117, Exs. A-C.) Following further briefing and more disclosures (*e.g.*, Dkt. #119, 118), on January 16, 2008, this Court denied the Motion to Remand. (Dkt. #122.)

3. On January 17, 2008, Mr. Moussaoui filed his Opening Brief. Among other things, he argued that the disclosures relating to the recordings and destruction of witness interrogations required a remand. (Dkt. #126.)

4. On July 3, 2008 (the date on which the Government was scheduled to file its Responsive Brief), the Government moved for a 60-day extension on the grounds that Department of Justice officials conducting a criminal investigation into these matters have “uncovered new information that may be relevant to the issues that were addressed in the remand proceeding and have been raised again on appeal.” (Dkt. #196 ¶ 2.) In support of its motion, the Government states that the

new information has “created unfor[e]seen complications that directly bear on the government’s ability” to “ensure the accuracy of the government’s brief and the adequacy of representations made to this Court.” (*Id.*) The Government states that an extension is necessary to allow the criminal investigators “time to complete this particular phase of [the] 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.” (*Id.* ¶ 3.) The Government noted that the discovery of this new information constitutes “extraordinary circumstances” justifying a 60-day extension of the briefing schedule and a postponement of oral argument, currently scheduled for September 22, 2008, and that this relief “will ensure that [Mr. Moussaoui’s] claims are addressed in a fuller factual and legal context.” (*Id.* ¶¶ 3-4.)

DISCUSSION

Mr. Moussaoui, through undersigned counsel, agrees that these circumstances are “extraordinary” and require additional time. At this point, the Government has essentially indicated that it has very important information to reveal to Mr. Moussaoui, but it has not yet done so. Undersigned counsel will obviously need an opportunity to assess that information, follow-up, and update the

briefs for this Court. Only with additional time can that process be completed. Undersigned counsel therefore consent to the extension.

Respectfully, Mr. Moussaoui also renews his Motion to Remand.

(Dkt. #107.) The latest disclosures only underscore that the district court is the proper and most appropriate venue for the resolution of these kinds of issues, and that process should occur before this Court is asked to pass on the same. Only after the district court assesses how the Government's revelations impact its previous decisions will this Court have a properly developed appellate record on which to base its decisions. Under these circumstances, remand is appropriate. *See United States v. Dyess*, 478 F.3d 224, 231 (4th Cir. 2007) ("In light of the new information, this court remanded the case to the district court, directing it to 'conduct such further proceedings as it may deem appropriate.'"); *United States v. Severson*, 3 F.3d 1005, 1013 (7th Cir. 1993) (remanding to district court for "further fact-finding" in light of potentially relevant evidence produced during appeal).

Pursuant to Local Rule 27(a), on July 8, 2008, undersigned counsel informed counsel for the United States, Kevin R. Gringas, Esq., about the renewal of the Motion to Remand. Mr. Gringas indicated that the United States does not consent to the remand of this case.

Respectfully submitted,

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Dated: July 8, 2008

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 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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