

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,)

Appellant,)

v.)

ZACARIAS MOUSSAOUI,)

Appellee.)

No. 03-4162

FILED

JUL 10 2003

U.S. Court of Appeals
Fourth Circuit

**MOTION TO EXPEDITE CONSIDERATION OF
THE GOVERNMENT'S PETITION FOR
PANEL REHEARING OR REHEARING EN BANC**

The United States respectfully asks this Court to give expedited consideration to the government's Petition for Panel Rehearing or Rehearing En Banc, filed today. Without expedited consideration or a recall of the mandate, proceedings in the district court, which are currently scheduled to begin on Monday, July 14, 2003, may moot the government's petition.

Defendant Moussaoui is charged with capital offenses arising out of the September 11, 2001 terrorist attacks on the United States. In a pretrial order, the district court directed the government to produce for a Rule 15 trial deposition an enemy combatant detained overseas. The government filed an appeal from that order under section 7 of the Classified Information Procedures Act (CIPA), 18 U.S.C. App. 3, and the collateral order doctrine. On June 26, 2003, a panel of this Court dismissed the government's appeal for lack of jurisdiction, holding that the district court's order will not become final until the government defies the order and the district court imposes a sanction. The Court directed that the mandate issue forthwith, and, on July 3, 2003, denied the government's motion to recall the mandate. The mandate having returned to the district court, the district court has now ordered the government to advise it by July 14, 2003,

"whether it intends to comply." Thus, the district court proceedings will recommence that day.

If, at the conclusion of the proceedings below, the district court sanctions the government, the government's rehearing petition will likely be moot. That petition argues that CIPA permits the government to take an appeal from the district court's order *prior to the imposition of a sanction*. Alternatively, the government argues that the collateral order doctrine permits an immediate appeal where a district court has directed action that interferes with the President's conduct of military operations, in this case, the sensitive debriefing on an enemy combatant detained overseas. Both of these arguments deserve the Court's careful attention, but due to the recommencement of proceedings in the district court, the Court must review the government's petition expeditiously.

In light of this urgency, the United States asks the Court to circulate its Petition to the full Court at once, and to consider the government's arguments as soon as possible.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of July, 2003, a copy of the foregoing pleading was provided to the defendant via delivery to the U.S. Marshals Service and to counsel listed below by facsimile and first class United States mail:

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