

UNITED STATES OF AMERICA

v.

KHALID SHAIKH MOHAMMAD, WALID
MUHAMMAD SALIH MUBARAK BIN
'ATTASH, RAMZI BIN AL SHIBH, ALI
ABDUL-AZIZ ALI, MUSTAFA AHMED
ADAM AL HAWSAWI

AE112Q(AAA)

Mr. al Baluchi's Motion
for Appropriate Relief from
Government Demand
to Destroy Exculpatory Evidence

10 May 2016

- 1. Timeliness:** This motion is timely filed.
- 2. Relief Requested:** The defense respectfully requests that the military commission issue an order relieving the defense of any requirement to return or destroy exculpatory evidence contained in MEA-MEM-A-00000001 or MEA-MEM-A-00000172, or related work product.
- 3. Overview:** The government has demanded the return and destruction of certain favorable evidence, provided to the defense in the course of discovery. This demand comes months after its disclosure as unclassified material, and after Mr. al Baluchi's defense team reviewed, analyzed and relied on the material during open hearings before the military court. Even if the government has properly claimed classified information privilege—which it has not—the government has waived its claim of privilege under M.C.R.E. 510(a).

The demand to destroy evidence favorable to the defense is a calculated effort to avoid the government's disclosure obligations. Because the information at issue also exists in defense work product and the military commission record, the only effect of destroying the original discovery would be to deny the defense a clean copy of the evidence it could use in evidentiary proceedings. Such destruction would violate the constitutional guarantee of access to evidence, and require dismissal of the charges with prejudice.

4. Burden of Proof and Persuasion: Because the government is demanding action, the government should bear the burden of persuasion on the requirement to destroy evidence, including a valid, public invocation of the classified information privilege.

5. Facts:

a. On 6 September 2012, the defense requested all documents and information relating to White House and Department of Justice consideration of the Central Intelligence Agency Rendition, Detention, and Interrogation Program.¹

b. On 11 October 2012, the government denied the request, stating that it intended to produce some but not all of the requested documents.²

c. On 27 December 2012, the defense filed AE112 Motion to Compel Discovery Related to White House and DOJ Consideration of the CIA Rendition, Detention and Interrogation Program.

d. On 10 January 2013, the government filed AE112A Government's Response to Motion to Compel Discovery Related to White House and DOJ Consideration of the CIA Rendition, Detention and Interrogation Program.

e. On 22 January 2013, the defense filed AE112C Reply to Government's Response to Motion to Compel Discovery Related to White House and DOJ Consideration of the CIA Rendition, Detention and Interrogation Program.

f. On 11 December 2015, the defense argued AE112, but the government did not, stating that it intended to file a motion to consolidate RDI-related discovery.³

¹ AE112 Motion to Compel Discovery Related to White House and DOJ Consideration of the CIA Rendition, Detention and Interrogation Program, Attachments B and C.

² AE112, Attachment D.

³ Unofficial/Unauthenticated Transcript of 11 December 2015 at 10095-96, 10126-27.

g. On 5 February 2016, the government provided, via NIPR email, three Department of Justice Office of Legal Counsel memoranda responsive to AE112.⁴ The government explained its production of these three OLC memoranda as follows:

2. The Prosecution reviewed the documents in full, unredacted form and found that two of the attached documents contained information under the redactions that were arguably non-cumulative, relevant and helpful to the Defense. Those two documents are hereby provided with the relevant information, however redactions remain over information the Prosecution has deemed not discoverable under R.M.C. 701. (Bates numbers are MEA-MEM-A-0000001-26 and MEA-MEM-A-000000172-211).

3. The Prosecution also attaches an additional letter Bates Stamped MEA-MEM-0000370-383 which it found to be arguably non-cumulative, relevant and helpful to the Defense. It too has redactions of information not discoverable under R.M.C. 701, but fewer redactions than the publicly releasable version of the same document.

h. Beginning on 5 February 2016, consistent with its professional and constitutional obligations to provide competent, diligent, and effective assistance of counsel to its client, the defense team for Mr. al Baluchi reviewed, researched, and prepared for additional arguments and motions using MEA-MEM-A-0000001 to 26, MEA-MEM-A-00000172 to 211, and MEA-MEM 00000370 to 383. The al Baluchi defense team prepared a redbox version of the memoranda comparing the public, FOIA redactions to the government's *Brady* redactions. The al Baluchi team also provided a copy of the memoranda to Katherine Newell, a Military Commissions Defense Organization subject matter expert (SME),⁵ under the terms of Protective Order #2.⁶

⁴ Attachment B.

⁵ Ms. Newell has already provided a declaration to the military commission in AE112, found at AE112F Defense Notice of Exhibits, Attachments B and C.

⁶ AE014H.

i. At a closed 505(h) hearing on 19 February 2016, counsel for Mr. al Baluchi introduced the red-box version of the three documents into the record as AE112K, AE112L, and AE112M.

j. Over the weekend of 20-21 February 2016, SME Ms. Newell spent more than twenty hours analyzing red-box versions of the memoranda with numbered redactions.⁷ In consultation with defense teams, Ms. Newell prepared three documents, each analyzing one of the three memoranda, which were distributed to all defense teams. Counsel for Mr. al Baluchi carefully reviewed Ms. Newell's analyses, provided feedback to Ms. Newell, and used the analyses to prepare for oral argument.

k. On 23 February 2016, counsel for Mr. al Baluchi substituted versions of AE112K, AE112L, and AE112M with numbered redactions and relied on the analyses of the three memoranda to argue the individual redactions in AE112K, AE112L, and AE112M.⁸ The military commission was satisfied after counsel argued eleven of the 150 redactions in AE112K, AE112L, and AE112K, and stated:⁹

⁷ Unofficial/Unauthenticated Transcript of 23 February 2016 at 10903. Consistent with the position in AE362B(AAA) Mr. al Baluchi's Response to Scheduling Order, all members of Mr. al Baluchi's defense team had a twenty-four hour period of rest and recuperation over the 20-21 February 2016 weekend. Ms. Newell is not a member of Mr. al Baluchi's defense team, and Mr. al Baluchi's counsel has no authority over her work schedule.

⁸ T. 23 FEB 2016 at 10864-901. The government made six redactions in the publicly available transcript.

⁹ *Id.* at 10903.

MJ [COL POHL]: Okay. If we need to, I will give you an opportunity to go through all 150 after I hear from the government, but I don't really think I need to hear that right now. I understand your point.

LDC [MR. CONNELL]: Right.

MJ [COL POHL]: Your point made. If you had to, you would have a justification for each one of these specifically more so than specifically the ----

1. On the same day, counsel for Mr. al Baluchi suggested treating AE112K, AE112L, and AE112M as a "test case" for the government's unilateral redaction process:¹⁰

The government is operating at a document level and puts a burden on us, I suppose -- a burden that I do not relish because it is so much work -- but a burden to do the eaches. And so I have a proposal that I'll call the bluff and let us brief why we think that each of these redactions is discoverable and accept the documents in camera and review them. It's not millions of documents, it's only 150 redactions in, you know, 20 or 30 pages, and let's see who is right.

MJ [COL POHL]: Okay. Okay.

LDC [MR. CONNELL]: Thank you.

MJ [COL POHL]: We'll use this as a test case for going forward.

LDC [MR. CONNELL]: Yeah. That's right.

¹⁰ *Id.* at 10937-38.

m. On 24 February 2016, the government moved to seal AE112K, AE112L, and AE112M as potentially classified:¹¹

TC [MR. GROHARING]: Yes, Judge, thank you. Your Honor, the government would move -- moves to seal Exhibits 112K, L, and M. We have been advised that those exhibits may contain classified information. That matter is under review right now. We would ask that those exhibits be sealed and treated as classified. We expect to have additional guidance regarding the exhibits at some point later today.

Counsel for Mr. al Baluchi objected to the sealing of AE112L and AE112M (which did not, as far as they knew, contain any classified information), as well as the anticipated redaction of the public transcript.¹² Counsel for Mr. al Baluchi also requested permission to discuss the matter with the Chief Defense Counsel, which the military commission deferred.¹³

n. On 26 February 2016, the government stated to the military commission:

¹¹ Unofficial/Unauthenticated Transcript of 24 February 2016 at 11093-94.

¹² *Id.* at 11098-99.

¹³ *Id.* at 11099-101.

CP [BG MARTINS]: Your Honor, this is just a brief notice in connection with the military commission's expectation of reviewing government discovery under the rubric of 397 and the underlying motions. I want to notify the commission that the prosecution has coordinated as necessary to provide the military judge the unredacted OLC memos. These are the memos Mr. Connell is seeking. We will do that in conjunction with requests for substitutions under M.C.R.E. 505(f), and this will be as to categories C and E of the ten-category construct as well as other categories within that construct.

MJ [COL POHL]: Just so I am clear, we are talking about, I believe, 112K, L and M, and I don't have them sitting in front of me, and so you are going to give me totally unredacted ----

CP [BG MARTINS]: You will see the unredacted ones as part of our submissions with regard to the ten-category construct, the appropriate ones. They will be the among the original documents containing information we will be seeking a substituted form for.

MJ [COL POHL]: When can I expect to have those?

CP [BG MARTINS]: We are going to be laboring to try to do the first of those as early as the 22nd of March, but it will be before 30 September.

o. Subsequent to the February 2016 hearing, Mr. al Baluchi's legal team has spent approximately 29 hours analyzing AE112K, AE112L, and AE112M, not counting the hours

spent participating in the spill cleanup and investigation or the preparation of this motion. In addition to these 29 hours, Mr. al Baluchi's legal team has complied with all instructions of security and information technology personnel regarding spill remediation.

p. On 13 April 2016, the government sent the defense a letter seeking the return of physical copies and destruction of all electronic copies of MEA-MEM-A-00000001 to 26 and MEA-MEM-A-00000172 to 211, including from classified information technology systems.¹⁴

q. On 15 April 2016, counsel for Mr. al Baluchi sent the government a letter requesting permission to discuss classified information with the Chief Defense Counsel and request policy and ethical guidance regarding the government demand.¹⁵

r. On 27 April 2016, the government, via NIPR email, authorized counsel for Mr. al Baluchi to share the classified correspondence with the Chief Defense Counsel.¹⁶

s. On 28 April 2016, counsel for Mr. al Baluchi requested clarification of the scope of the government's demand for destruction of information and/or documents.¹⁷

t. On 29 April 2016, the government responded by email as follows: "To clarify, the Prosecution's letter simply requests remedial action (return of all hard copies and deletion of all electronic copies) be taken on the memoranda in the form the Prosecution produced them."¹⁸

u. On 5 May 2016, counsel for Mr. al Baluchi requested the government position on a motion to provide the military judge with un-redacted copies of the three memoranda. The government stated its opposition to this course of action.¹⁹

¹⁴ Attachment C.

¹⁵ Attachment D.

¹⁶ Attachment E.

¹⁷ Attachment F.

¹⁸ Attachment G.

¹⁹ Attachment H. Mr. al Baluchi, of course, does not know what materials the government provides the military judge on an *ex parte* basis, and considered the possibility that the

6. Law and Argument:²⁰

In an extraordinary move, the government has demanded the defense destroy evidence that the Office of the Chief Prosecutor produced as favorable to the defense. This demand to destroy evidence whose production is required by *Brady v. Maryland*²¹ and its progeny is no routine, good faith destruction of evidence pursuant to standard procedures. Rather, the government seeks to exploit defense non-disclosure agreements “in a calculated effort to circumvent the disclosure requirements established by *Brady v. Maryland* and its progeny.”²² This effort must fail: the government cannot simultaneously demand the destruction of exculpatory evidence and maintain this prosecution.

Initially, the government has not established its authority to claw back the discovery it provided in an unclassified format. The government has not made a valid, public invocation of

government had provided the memoranda in accordance with this position on 26 February 2016. See, e.g., AE308H Government Unclassified Notice of *Ex Parte, In Camera*, Under Seal Classified Filing..

²⁰ Mr. al Baluchi is entitled to participate in any hearing regarding the destruction of information contained in AE112K, AE112L, and AE112M. See AE136A(AAA) Mr. al Baluchi’s Response to Government Motion Regarding Accused’s Presence During Closed Proceedings. A capital defendant’s right of access to the courts is a substantial constitutional guarantee. Such access must be “adequate, effective and meaningful.” *Bounds v. Smith*, 430 U.S. 817, 822 (1977). In this particular instance, the government is seeking the complete return and destruction of exculpatory material that was disclosed to the defense and utilized in its litigation preparation as well as in open court before the Commission. Although communication is at the core of an attorney-client representation, counsel for Mr. al Baluchi cannot even explain the significance of the government’s demand to Mr. al Baluchi. See AE380AA(AAA) Mr. al Baluchi’s Response to the Military Commission’s Request for a Position on the Allocation of Control Between Defendant and Counsel. Any hearing or session addressing the propriety of the government’s sudden and delayed invocation of the privilege, or its request to return or destroy such material must, as a matter of constitutional law and fundamental fairness, include Mr. al Baluchi. Counsel for Mr. al Baluchi cannot obtain his informed consent to comply with the government’s demand without explaining the significance of the demand to Mr. al Baluchi.

²¹ 373 U.S. 83 (1963).

²² *California v. Trombetta*, 467 U.S. 479, 488 (1984). These non-disclosure agreements do not override constitutional principles. See Executive Order 13,526 *Classified National Security Information* (December 29, 2009) § 6.2(d) (“Nothing in this order limits the protection afforded any information by other provisions of law, including the Constitution ...”).

classified information privilege.²³ Indeed, the government cannot invoke classified information privilege at this stage, as it has already waived its privilege by producing the information to the defense as unclassified.²⁴

The government's obligations under *Brady* are well-known.²⁵ *Brady* and its progeny create a broad disclosure requirement, holding that due process requires the government to produce all information and materials favorable to the defense.²⁶ *Brady* and its progeny define as favorable (and thus subject to disclosure) not simply those materials that affirmatively demonstrate the defendant's innocence, but also those that diminish the effect of the inculpatory evidence presented by the government, both as to guilt and as to punishment.²⁷ All doubts regarding the exculpatory nature of materials should be resolved in favor of disclosure.²⁸ These

²³ See *Ellsberg v. Mitchell*, 709 F.2d 51, 63-64 (D.C. Cir. 1983); AE013G Joint Defense Response to Government Motion to Protect Against Disclosure of National Security Information at 14-16. Despite marking Attachment I as classified out of an abundance of caution, counsel for Mr. al Baluchi does not concede that any information provided in the 5 February 2016, disclosure is classified, or classified at a level beyond the authorizations of members of the defense team.

²⁴ M.C.R.E. 510(a) (providing that voluntary disclosure waives privilege); see also *Al-Haramain Islamic Found., Inc. v. Bush*, 507 F.3d 1190, 1202 (9th Cir. 2007) (holding that the government did not waive privilege where it inadvertently disclosed a document marked as classified and immediately sought its return); *Barre v. Obama*, 932 F. Supp. 2d 5, 9 (D.D.C. 2013) (ruling that two pieces of information included in a publicly filed factual return would not be deemed protected, despite government request: "[t]he disclosure of both the geo-coordinates and the single word in the March 2002 Handnote were not made under seal to the opposing party but, instead, were publicly released and placed on the Court's docket, where they remain.").

²⁵ See generally *Bagley v. United States*, 473 U.S. 667 (1985); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Strickler v. Greene*, 527 U.S. 263 (1999); *Banks v. Dretke*, 540 U.S. 668 (2004). See also *Berger v. United States*, 295 U.S. 77, 88 (1935) ("The [government] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest therefore, in a criminal prosecution is not that it shall win the case, but that justice shall be done.").

²⁶ *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

²⁷ See, e.g., *United States v. McVeigh*, 954 F. Supp. 1441, 1443 (D. Colo. 1997).

²⁸ *United States v. Agurs*, 427 U.S. 97, 108 (1976); *United States v. McVeigh*, 954 F. Supp. 1441, 1450 (D. Colo. 1997); see also *Roviaro v. United States*, 353 U.S. 53 (U.S. 1957) (holding that,

principles are further reinforced in R.M.C. 701(e), which defines exculpatory evidence as evidence “which reasonably tends to: (A) Negate the guilt of the accused of an offense charged; (B) Reduce the degree of guilt of the accused with respect to an offense charged; or (C) Reduce the punishment.”

The precise information that the government seeks to suppress through destruction of the evidence it provided is undoubtedly favorable to the defense. Mr. al Baluchi addresses the specifics of this issue in a classified addendum to this motion.²⁹

Unlike an ordinary disclosure decision, the military commission need not predict that the information will be helpful in the future, as the information the government provided as unclassified empirically and actually helped the defense. Mr. al Baluchi actually used the documents in an open court proceeding, with the government present, to argue why the government should produce more discovery. In fact, the government sought to classify and claw back information in AE112K and AE112L only after it saw the effectiveness of the information in supporting defense arguments.

Indeed, in seeking to demonstrate its *Brady* compliance, the government has clearly conceded that the information is favorable to the defense. In initially producing the documents containing the information, the government wrote:³⁰

because an informant’s identity was relevant and helpful to the defense, the government’s privilege against disclosure must give way).

²⁹ Attachment I. Because the information is helpful to the defense, the classification of the information has no impact on the government’s obligations. Under the standard in *United States v. Yunis*, 867 F.2d 617, 623 (D.C. Cir. 1989), a defendant is entitled to classified information if it is helpful to the defense, a category which includes all evidence favorable under *Brady*. *United States v. Mejia*, 448 F.3d 436, 456-57 (D.C. Cir. 2006).

³⁰ Attachment B.

2. The Prosecution reviewed the documents in full, unredacted form and found that two of the attached documents contained information under the redactions that were arguably non-cumulative, relevant and helpful to the Defense. Those two documents are hereby provided with the relevant information, however redactions remain over information the Prosecution has deemed not discoverable under R.M.C. 701. (Bates numbers are MEA-MEM-A-0000001-26 and MEA-MEM-A-000000172-211).

The government included even stronger language in its letter demanding return of the non-cumulative, relevant, and helpful information.³¹

The government's demand for destruction of exculpatory evidence violates the due process guarantee of a fair trial. "Under the Due Process Clause of the [United States Constitution], criminal prosecutions must comport with prevailing notions of fundamental fairness. We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense. To safeguard that right, the Court has developed 'what might loosely be called the area of constitutionally guaranteed access to evidence.'"³²

One aspect of access to evidence is the protection of exculpatory evidence against destruction. Although destruction of evidence issues normally arise in routine, good faith situations,³³ the government here seeks to destroy evidence "in a calculated effort to circumvent the disclosure requirements established by *Brady v. Maryland* and its progeny."³⁴ The evidence

³¹ Attachment C.

³² *California v. Trombetta*, 467 U.S. 479, 485 (1984) (quoting *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982)).

³³ See *Arizona v. Youngblood*, 488 U.S. 51, 57-58 (1988); *Killian v. United States*, 368 U.S. 231, 242 (1961). Although Larry Youngblood lost his destruction of evidence claim in the Supreme Court, he was later exonerated by DNA testing of the small evidence sample that remained. See Marc Bookman, *Does an Innocent Man Have the Right to Be Exonerated?*, *The Atlantic*, Dec. 6, 2014.

³⁴ *Trombetta*, 467 U.S. at 488.

the government seeks to destroy possesses an exculpatory value that is apparent before the destruction, and is unavailable to the defense by any alternate means.³⁵ As long as the government continues with this prosecution, it cannot require the destruction of favorable evidence it provided to the defense.³⁶

Finally, it is impossible for Mr. al Baluchi to destroy the information the government seeks to suppress without wiping out almost fifty hours' worth of legal work product and significant portions of the military commission record. After the government produced MEA-MEM-A-00000001 and MEA-MEM-A-00000172, the defense has reproduced and analyzed the information in at least six different formats: the red-box versions introduced on 19 February 2016; the numbered red-box versions substituted on 23 February 2016; Ms. Newell's memoranda; Mr. al Baluchi's proprietary team analysis; oral argument on 23 February 2016; and a red-box/blue-box version created for this motion.³⁷ The demanded destruction of the original discovery would have no effect on national security, as the information will continue to exist in defense work product and the military commission record. Unless the government demands the destruction of legal work product—a position it disclaims³⁸—the only effect of the destruction would be to deny the defense a “clean” version it can use in later evidentiary military commission proceedings.

The government can recover the classified exculpatory evidence at issue, but not while subject to the constitutional requirement to disclose rather than destroy exculpatory evidence. As

³⁵ See *id.* at 489; *Youngblood*, 488 U.S. at 58; *United States v. Chandler*, 894 F.2d 463 (D.C. Cir. 1990).

³⁶ See *United States v. Rezaq*, 899 F. Supp. 697, 708 (D.D.C. 1995) (explaining that need to protect classified information cannot override fair trial requirements); see also *United States v. Pasha*, 797 F.2d 1122, 1138 (D.C. Cir. 2015) (discussing remedies for destruction of evidence).

³⁷ See Attachment I.

³⁸ Attachment G.

with all classified information favorable to the defense, the government faces the choice between disclosing the evidence and prosecuting the defendants. If the government forces the destruction of the exculpatory evidence, the military commission must dismiss the charges against the defendants with prejudice.

7. Oral Argument: The Defense requests oral argument in connection with this motion.

8. Witnesses:³⁹

John Rizzo

Steven G. Bradbury

Katherine Newell

9. Conference with Opposing Counsel: The defense has conferred with the government. The government objects to the proposed relief.

10. List of Attachments:

A. Certificate of Service

B. Memorandum dated 5 February 2016 from Trial Counsel to Defense Counsel regarding “Discovery of OLC DOJ Memoranda regarding the former CIA RDI program.”

C. [REDACTED] Memorandum dated 13 April 2016 from Trial Counsel to Defense Counsel regarding “Request for Return of Classified Department of Justice Office of Legal Counsel Memoranda.”

D. [REDACTED] Memorandum dated 15 April 2016 from Counsel for Mr. al Baluchi to Trial Counsel regarding “Need-to-Know Determination.”

E. Email dated 27 April 2016 from Trial Counsel to Counsel for Mr. al Baluchi authorizing the sharing of classified correspondence with the Chief Defense Counsel.

³⁹ See also Attachment I.

F. [REDACTED] Memorandum dated 28 April 2016 from Counsel for Mr. al Baluchi to Trial Counsel regarding “Clarification of 13 April 2016 Letter.”

G. Email dated 29 April 2016 from Trial Counsel to Defense Counsel clarifying request for remedial action regarding the three memoranda.

H. Email dated 5 May 2016 from Trial Counsel to Defense Counsel regarding Trial Counsel’s opposition to provide the Commission with un-redacted versions of the three memoranda.

I. [REDACTED] AE112Q, Attachment I.

Very respectfully,

//s//
JAMES G. CONNELL, III
Detailed Learned Counsel

Counsel for Mr. al Baluchi

//s//
STERLING R. THOMAS
Lt Col, USAF
Detailed Military Defense Counsel

Attachment A

CERTIFICATE OF SERVICE

I certify that on the 10th day of May, 2016, I hand-delivered the foregoing document with the Clerk of the Court and served the foregoing on all counsel of record.

//s//
JAMES G. CONNELL, III
Learned Counsel

Attachment B

Attachment C

United States v. KSM, et al.

APPELLATE EXHIBIT 112Q (AAA)

(Pages 21 - 22)

Classified

Defense Motion

APPELLATE EXHIBIT 112Q (AAA), Attachment C, is located in the classified annex of the original record of trial.

**POC: Chief, Office of Court Administration Office
of Military Commissions**

Attachment D

United States v. KSM, et al.

APPELLATE EXHIBIT 112Q (AAA)

(Page 24)

Classified

Defense Motion

APPELLATE EXHIBIT 112Q (AAA), Attachment D, is located in the classified annex of the original record of trial.

**POC: Chief, Office of Court Administration Office
of Military Commissions**

Attachment E

From: CLAYTOGT
To: Connell, James G III CIV (US); [REDACTED]
Cc: [REDACTED]
Subject: [Non-DoD Source] RE: Request for position
Date: Wednesday, April 27, 2016 2:51:52 PM

James,

I attempted to send you a response to the below via my DOJ phone last night and would like you to verify you have received. Specifically, although more abbreviated, last night's response was meant to convey that the Prosecution acknowledges that BG Baker has a need-to-know the classified information set forth in the 13 April Memorandum and does not object to you forwarding BG Baker a copy. As such, I believe a motion is no longer necessary.

Please let me know if you disagree or have any other questions.

Regards,

Clay Trivett

-----Original Message-----

From: Connell, James G III CIV (US) [REDACTED]
Sent: Tuesday, April 26, 2016 5:17 PM
To: [REDACTED]
[REDACTED] lay Trivett
CLAYTOGT
[REDACTED]

[REDACTED]
[REDACTED]
Subject: Request for position

ATTORNEY COMMUNICATION: DO NOT MONITOR

Dear Brigadier General Martins et al.,

I have sent you an unclassified letter on SIPR following up on our 15 April 2016 request for a determination of Brigadier General Baker's need to know classified information with respect to your 13 April 2016 demand. We are considering a motion to compel the government to make the requested need-to-know determination. May I state your position on such a motion?

Best regards,

James G. Connell, III
Military Commissions Defense Organization
1620 Defense Pentagon
Washington, DC 20301-1620
Office [REDACTED]
Mobile [REDACTED]

This email is an attorney communication exempt from DOD monitoring, and may be privileged or confidential. If you receive it in error, please delete it and notify me of the error. Thank you.

Attachment F

United States v. KSM, et al.

APPELLATE EXHIBIT 112Q (AAA)

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Classified

Defense Motion

APPELLATE EXHIBIT 112Q (AAA), Attachment F, is located in the classified annex of the original record of trial.

**POC: Chief, Office of Court Administration Office
of Military Commissions**

Attachment G

From: CLAYTOST
To: [REDACTED]
[REDACTED]
Subject: [Non-DoD Source] Defense-Requested Extension for Return of Classified Information
Date: Friday, April 29, 2016 7:02:57 PM

Defense Counsel,

Several of you have sent correspondence in response to my 13 April 2016 request for the return of classified documents, requesting an extension of time to respond. However, there was no date requested by counsel for Mr. Mohammad or Mr. Binalshibh for the extension request. Please inform me by close of business on Monday (2 May 2016) of what date you are requesting for the extension, and the Prosecution will then respond to your request for the extension.

Also, Mr. Connell requested a clarification of the Prosecution's request. To clarify, the Prosecution's letter simply requests remedial action (return of all hard copies and deletion of all electronic copies) be taken on the memoranda in the form the Prosecution produced them.

Regards,

Clay Trivett

Attachment H

ATTORNEY COMMUNICATION: DO NOT MONITOR

Dear Brigadier General Martins et al.,

We intend to file a motion to compel the government to file an unredacted version of AE112K, L, and M with the military commission. May I state your position on this motion?

Best regards,

James G. Connell, III
Military Commissions Defense Organization
1620 Defense Pentagon
Washington, DC 20301-1620
Office [REDACTED]
Mobile [REDACTED]

This email is an attorney communication exempt from DOD monitoring, and may be privileged or confidential. If you receive it in error, please delete it and notify me of the error. Thank you.

Attachment I

United States v. KSM, et al.

APPELLATE EXHIBIT 112Q (AAA)

(Pages 36-41)

Classified

Defense Motion

APPELLATE EXHIBIT 112Q (AAA), Attachment I, is located in the classified annex of the original record of trial.

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