

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

AE232(AAA)

**Mr. al Baluchi's Motion to Authorize
Counsel to Provide Classified Information to
Appropriately Cleared Members of the
Legislative Branch**

4 October 2013

1. **Timeliness:** This pleading is timely filed.

2. **Relief Requested:**

Under Amended Protective Order #1 ¶¶ 5(f) and 6(g), the military commission should authorize counsel for Mr. al Baluchi to disclose information defined as classified to appropriately cleared members of Congress and their appropriately cleared staff.

3. **Burden of Proof:** The defense bears the burden of proof.

4. **Facts:**

a. On 9 February 2013, the military commission issued AE013AA Amended Protective Order #1. Paragraph 5(f) of Amended Protective Order #1 provides in relevant part:

No member of the Defense, including any defense witness, is authorized to disclose any classified information obtained during this case, outside the immediate parameters of these military commission proceedings. . . . The Defense, and accused, and defense witnesses and experts are not authorized to use or refer to any classified information obtained as a result of their participation in commission proceedings in any other forum, or in a military commission proceeding involving another detainee.

Paragraph 6(g) provides in relevant part:

The Defense shall not disclose any classified documents or information to any person, including counsel in related cases of Guantanamo Bay detainees in military commissions or other courts (including, but not limited to, habeas proceedings), except those persons authorized by the Protective Order, the Commission, and

counsel for the Government with the appropriate clearances and the need-to-know that information.

b. Counsel for Mr. al Baluchi has the opportunity to submit information to one or more members of Congress and their staff which is defined as classified by Amended Protective Order #1. Counsel is informed that the relevant members of the Legislative Branch possess a security clearance allowing them to receive the information.

5. Argument:

In AE200(AAA) Mr. al Baluchi's Notice of Joinder, Factual Supplement & Argument to Defense Motion to Dismiss Because Amended Protective Order #1 Violates the Convention Against Torture, Mr. al Baluchi noted that Amended Protective Order #1 limits advocacy on his behalf within the Legislative Branch. Since that filing, an opportunity for legislative advocacy has arisen. To allow such advocacy, the military commission should authorize defense counsel to share information defined as classified with appropriately cleared members of the Legislative Branch.

These provisions of Amended Protective Order #1 not only limit Mr. al Baluchi, they limit the First Amendment rights of his defense team. "The right to petition is cut from the same cloth as the other guarantees of [the First] Amendment, and is an assurance of a particular freedom of expression."¹ Unless an exception is granted, Amended Protective Order #1 serves only to hide information from Congress that certain members of the Legislative Branch are authorized to receive. Where members of Congress and their staff possess the appropriate security clearance, no national security interest prevents disclosure.

6. Conference: The prosecution states its position as follows: "We do not consent [to disclosure] and we object to any such relief requested in a motion before the Commission."

¹ *McDonald v. Smith*, 472 U.S. 479, 482, (1985).

7. **Request for Oral Argument:** The defense requests oral argument.
8. **Request for Witnesses and Evidence:** To be determined.
9. **Additional Information:** None.
10. **Attachments:**

A. Certificate of Service

Very respectfully,

//s//

JAMES G. CONNELL, III
Learned Counsel

Counsel for Mr. al Baluchi

//s//

STERLING R. THOMAS
Lt Col, USAF
Defense Counsel

Attachment A

CERTIFICATE OF SERVICE

I certify that on the 4th day of October, 2013, I electronically filed the foregoing document with the Clerk of the Court and served the foregoing on all counsel of record by email.

//s//

JAMES G. CONNELL, III

Learned Counsel