

UNCLASSIFIED // FOR PUBLIC RELEASE  
MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY

UNITED STATES OF AMERICA

v.

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

AE292RRRR(AAA)  
**Mr. al Baluchi's Response**  
Notice of Ex Parte Under Seal Filing by  
Special Review Team

13 August 2015

1. **Timeliness:** This response is filed timely.
2. **Relief Sought:**
  - A. Mr. al Baluchi respectfully requests that the military commission deny AE292QQQQ and any relief the government may have requested in it.
  - B. In the alternative, Mr. al Baluchi respectfully requests that the military commission order the United States to serve a copy of AE292QQQQ on counsel for the defendants.
  - C. In the further alternative, if the military judge grants relief after an ex parte showing, “the military judge shall state the reasons for that decision without revealing the ex parte nature of the underlying showing.”<sup>1</sup>

3. **Overview:**

The military commission rules do not authorize the government's *ex parte* filing in AE292QQQQ.

4. **Argument:**

AE292QQQQ violates RMC 701(l)(2), which requires an adversarial “motion by a party” prior to *ex parte* proceedings.<sup>2</sup> In contrast to its approach to AE292K,<sup>3</sup> the prosecution has filed

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<sup>1</sup> Regulations for Trial by Military Commission ¶ 17-4(b).

<sup>2</sup> Mr. al Baluchi recognizes the possibility that AE292ZZZ is a response to AE292XX.

no such motion. No statute or rule authorizes the government's *ex parte* pleading. In addition to RMC 701(1)(2), Mr. al Baluchi relies on all the arguments and authorities in AE292J(AAA) Motion to Reconsider AE292-2 Granting Leave for *Ex Parte* Submission and AE292EE Response to Notice of Classified *Ex Parte* Filing by Special Trial Counsel.

Furthermore, this new under seal pleading directly implicates AE292YY, Defense Motion for Appropriate Relief, Disclosure by Military Judge Whether He has Acquired Information Relating to the Case from an Undisclosed Source and the Details of the Information, which seeks any additional information the military commission has received regarding this case. Secret, unilateral pleadings violate the Fifth and Eighth Amendments, as stated in that pleading, incorporated here by reference.

5. **Request for Oral Argument:** Oral argument is requested.
6. **Request for Witnesses:** None.
7. **Additional Information:** None.
8. **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  
Detailed Defense Counsel

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<sup>3</sup> AE292K Notice of Classified *Ex Parte* Filing by Special Trial Counsel. The military commission authorized this pleading in AE292-2(Rul) Ruling, which granted AE292-1(MFL) Notice of Classified *Ex Parte* Filing by Special Trial Counsel.

# Attachment A

**CERTIFICATE OF SERVICE**

I certify that on the 13th day of August, 2015, 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*