

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

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

AE371 (Mohammad)

Mr. Mohammad's Motion to Send Letter to the
President

September 3, 2015

1. Timeliness:

This filing is timely pursuant to Military Commissions Trial Judiciary Rule of Court, Rule 3.7.c(1).

2. Relief Sought:

Mr. Mohammad requests that the Commission authorize his counsel to place a letter, written by Mr. Mohammad and addressed to President Obama, in the United States Postal Service, postage prepaid, for delivery to the White House.

3. Overview:

Mr. Mohammad has written a letter to President Obama, and would like to have it delivered to its intended recipient. The letter does not contain any classified information. Although Mr. Mohammad wishes to send it only to the President, the Joint Task Force-Guantanamo officials and office tasked with evaluating outgoing correspondence have declined to accept the letter or make a determination whether the President's receipt and possible review of the letter would pose a risk to the guard force or other interests of Joint

Task Force-Guantanamo's mission. The Commission's authorization for counsel to mail the letter therefore is necessary to effectuate Mr. Mohammad's First Amendment right to redress his grievances and express his opinions to government officials, and to avoid the prospect of the government filing factually-inaccurate, diversionary and time-consuming allegations of imagined wrong-doing by Mr. Mohammad's defense counsel. *See, e.g.*, AE018Y; AE350.

4. Burden of Proof:

As the moving party, the defense bears the burden on this motion.¹

5. Facts:

a. Mr. Mohammad is a capitally-charged prisoner awaiting trial in Military Commission proceedings on board the United States Naval Base at Guantanamo Bay, Cuba, and subject to various orders, procedures and regulations imposed by the Military Commission and the Commander of the Joint Task Force-Guantanamo.

b. Mr. Mohammad has been imprisoned at Guantanamo Bay since 2006, and held virtually incommunicado for approximately 9 years. He is confined at an undisclosed location on the Guantanamo Naval Base in a facility generally known as Camp 7.

c. Mr. Mohammad has a right, protected by the First Amendment to the United States Constitution, to redress his grievances and express his opinions to government officials, to include the President.

d. Barack Hussein Obama II is the President of the United States, and exercises authority as, inter alia, the Chief of the Executive Branch and the Commander in Chief of the Armed Forces. In those capacities he has authority over the civilian and military departments and agencies that captured Mr. Mohammad in 2003, tortured him and now seek to execute

¹ RMC 905(c)(2).

him. In the event Mr. Mohammad is convicted and sentenced to death in Executive Branch Military Commission proceedings, the President will be required to make the ultimate decision whether Mr. Mohammad is executed. *See* 10 U.S.C. § 950i(b).

e. In August 2014, Mr. Mohammad composed a letter to President Obama. *See* Attachment B. Mr. Mohammad attempted to submit the letter for processing and transmittal through the Camp 7 mail system, but was informed by a Watch Commander or Assistant Watch Commander that the document exceeded the limit of two pages of correspondence that prisoners are allowed to mail each month.

f. Mr. Mohammad thereafter enlisted the assistance of his Defense team to mail the President's letter. Defense counsel attempted to deliver the letter to the Joint Task Force-Guantanamo, for review and transmittal, by proffering it to an Assistant Staff Judge Advocate, who refused to accept it.

g. The letter was then reviewed by Mr. Mohammad's Defense Information Security Officer (DISO) and found to contain no classified information. The DISO thereupon submitted the letter to the Military Commission Chief Security Officer (CSO) at the Washington Headquarters Services/Office of Special Security for further classification review, and for a privilege review pursuant to AE013DDD.

h. On or about January 9, 2015, the DISO received a telephone call from Office of Military Commission Security seeking confirmation that the letter had been authored by Mr. Mohammad and advising the DISO that a "secondary review" would be necessary.

i. On January 28, 2015, the DISO was informed by the CSO that the FBI, NSA, and DOD considered the contents of the letter to be Unclassified. The DOD further advised that it had no equities in the information, and that DOD considered a letter to the President of

the United States to be “non-legal mail,” within the meaning of AE018U, which, in conjunction with the “GTF-GTMO Commander’s June 17, 2014 Policy for Handling Detainee Legal/Non-Legal [M]ail” required the letter to be screened by “JTF-GTMO in accordance with JTF-GTMO SOP 14.10; a classification review does not replace [sic] this requirement.”

j. On or about February 17, 2015, Mr. Mohammad’s defense counsel, in the company of the DISO, attempted to submit the letter for screening by the J2 (intelligence) division of Joint Task Force-Guantanamo at Guantanamo Bay, Cuba. At that time, a J2 representative, accompanied by an assistant Staff Judge Advocate (SJA), who serves as legal counsel to the Joint Task Force-Guantanamo, refused to accept the letter.

k. The J2 representative further directed counsel and the DISO to submit to the Court Security Officer (CSO) for screening.

l. Defense counsel thereafter consulted with the CSO, who reviewed the relevant Commission orders and SOP referenced by the DOD, and concluded that defense counsel and the DISO had been correct in delivering the letter to the JTF headquarters for transmittal.

m. There are no legitimate national security, institutional security or guard force interests that are served by preventing the President from receiving and reading Mr. Mohammad’s letter.

n. There are no circumstances applicable to Mr. Mohammad that warrant departure from the standard corrections practice of allowing prisoners to correspond with their attorneys, members of Congress and the President. *See, e.g.*, 28 CFR § 540.2(c) (Bureau of Prisons Regulations defining “Special Mail” to include inmate correspondence “sent to the . . . President and Vice President of the United States,” and “Members of the U.S. Congress”).

6. Law and Argument:

The ability of inmates to send non-contraband, written correspondence to public officials and petition for redress of grievances is guaranteed by the First Amendment, and regulations facilitating such communications are a feature of any constitutionally adequate, humane correctional institution. *See Wolff v. McDonnell*, 418 U.S. 539, 574-76 (1974); *American Civil Liberties Fund of Michigan v. Livingston County*, ___ F.3d ___, 2015 WL 4740099 (6th Cir. 2015); *Dolan v. Connolly*, ___ F.3d ___, 2015 WL 4477342 (2nd Cir. 2015); *Merriweather v. Zamora*, 569 F.3d 307, 316-17; (6th Cir. 2009); *Chinchello v. Fenton*, 805 F.2d 126, 128 & fn. 2 (3rd Cir. 1986).

There can be no institutional or Joint Task Force interests that trumps Mr. Mohammad's rights in this regard when he seeks to send a letter to the President of the United States. Nor is there any reasonable likelihood that the President's receipt and review of the unclassified contents of the letter will pose any risk to the legitimate interests of the Joint Task Force.

In light of the Joint Task Force's refusal to accept, let alone transmit Mr. Mohammad's unclassified letter, he should be afforded the alternative of permitting his attorneys to put it in the mail for him. *See Houston v. Lack*, 487 U.S. 266, 270 (1988) (notice of appeal not untimely where unrepresented inmate "had done all that reasonably could be expect to get letter to its destination" by depositing it in prison mail system).

7. Oral Argument: Mr. Mohammad requests oral argument.

8. Witnesses: None at this time.

9. Conference with Opposing Counsel: The Prosecution has informed Mr. Mohammad's counsel that it will oppose this motion.

10. Attachments:

- A. Certificate of Service
- B. Mr. Mohammad's Letter to President Obama with Attachment

//s//

DAVID Z. NEVIN
Learned Counsel

//s//

GARY D. SOWARDS
Defense Counsel

//s//

DEREK A. POTEET
Maj, USMC
Defense Counsel

Counsel for Mr. Mohammad

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on the 3rd day of September 2015, I electronically filed AE371 (Mohammad) Mr. Mohammad's Motion to Send Letter to the President, with the Clerk of Court and served the foregoing on all counsel of record by electronic mail.

//s//
DAVID Z. NEVIN
Learned Counsel

United States v. KSM et al.

APPELLATE EXHIBIT 371 (KSM)

(Pages 9 - 80)

Under Seal

Attachment B

**APPELLATE EXHIBIT 371 (KSM) is located in
the original record of trial.**

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

United States v. KSM et al.

APPELLATE EXHIBIT 371 (KSM)