

**United States v. KSM et al.**

# **APPELLATE EXHIBIT 373 (AAA)**

**(Pages 66 - 143)**

**Under Seal**

*Classified*

**Attachment K**

**APPELLATE EXHIBIT 373 (AAA) is located in the classified annex of the original record of trial.**

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

**United States v. KSM et al.**

**APPELLATE EXHIBIT 373 (AAA)**

## **Attachment L**

(hand-delivered, pending classification review)

**United States v. KSM et al.**

# **APPELLATE EXHIBIT 373 (AAA)**

**(Pages 145 - 147)**

**Under Seal**

*Classified*

**Attachment L**

**APPELLATE EXHIBIT 373 (AAA) is located in the classified annex of the original record of trial.**

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

**United States v. KSM et al.**

**APPELLATE EXHIBIT 373 (AAA)**

## **Attachment M**

(pending classification review, filed under seal)

**United States v. KSM et al.**

# **APPELLATE EXHIBIT 373 (AAA)**

**(Pages 149 - 151)**

**Under Seal**

*Classified*

**Attachment M**

**APPELLATE EXHIBIT 373 (AAA) is located in the classified annex of the original record of trial.**

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

**United States v. KSM et al.**

**APPELLATE EXHIBIT 373 (AAA)**

## **Attachment N**

UNITED STATES OF AMERICA

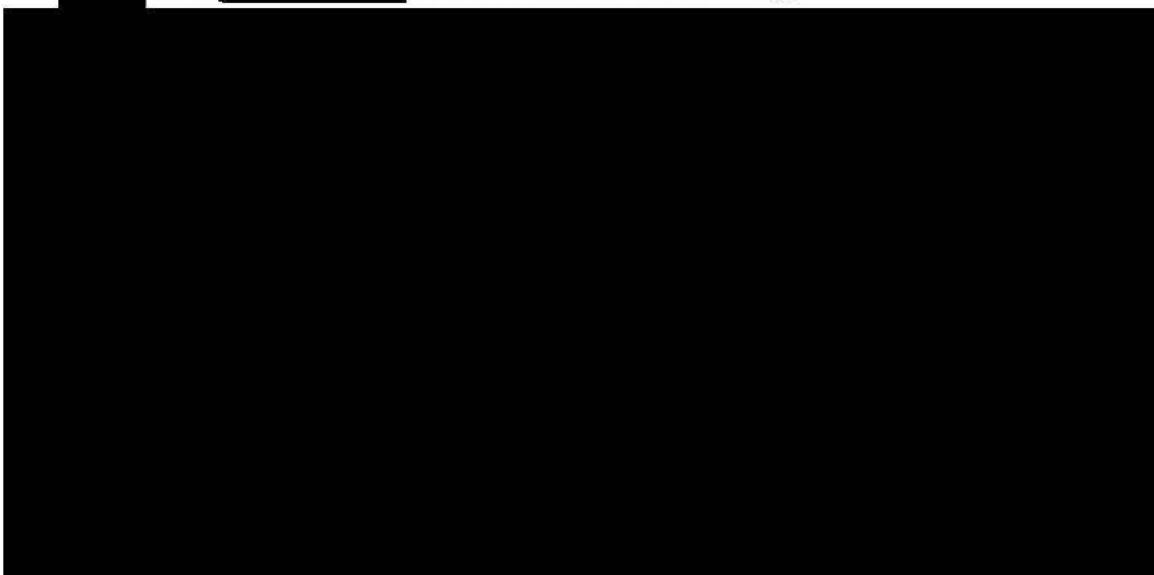
v.

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

**DECLARATION**

1. [REDACTED] I am over 18 years of age and competent to make a declaration.
2. I have been assigned as a contract linguist for the defense team of Ammar al Baluchi since 2008.
3. I have been asked to review and sign a declaration related to events in September and October 2014 in support of a legal motion. This declaration sets forth relevant facts, but is not a complete statement of all events in September and October 2014.
4. In September 2014, I travelled with James Connell, a mitigation specialist, and others to Kuwait for investigation in preparation for motions, trial, and sentencing in this case. We videorecorded portions of our investigation for review by Mr. al Baluchi.
5. Also in September 2014, Mr. Connell and I traveled from Kuwait to Dubai, United Arab Emirates, for additional investigation in preparation for motions, trial, and sentencing in this case. We videorecorded portions of our investigation for review by Mr. al Baluchi.
6. Portions of the videorecordings involved very sensitive aspects of the investigation, including medical and family information.

7. On 14 October 2014, I traveled with Mr. Connell and others to Guantanamo Bay, Cuba, to visit Mr. al Baluchi following the cancellation of the scheduled October 2014 hearings.
8. On 16 October 2014, I burned videorecordings made by team members in Kuwait and Dubai to two DVDs for review by Mr. al Baluchi. I marked the DVDs in accordance with AE018U Written Communications Order and team policy. The following photographs truly and accurately depict my handwriting in black pen on the two DVDs, except the words [REDACTED] I am familiar with Mr. Connell's handwriting, and the words [REDACTED] [REDACTED] on the [REDACTED] are in Mr. Connell's handwriting.

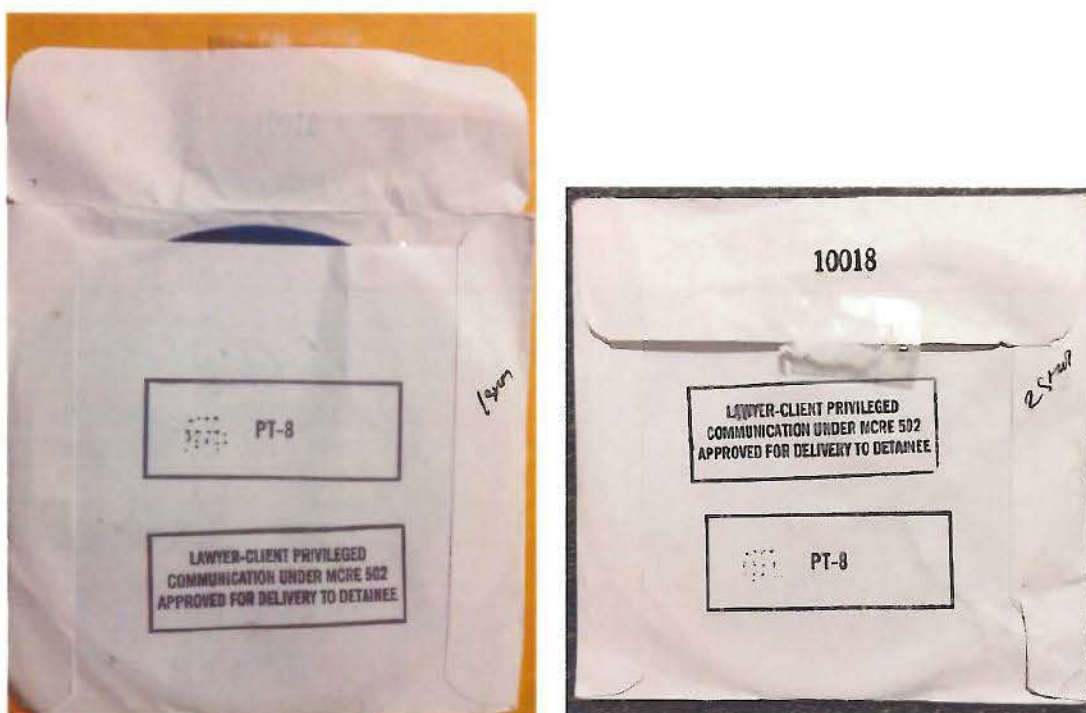


9. After preparing the DVDs, I placed them in white DVD sleeves and gave them to a paralegal for Privilege Team review.
10. From my work with the military commission, I am familiar with the operation of the Privilege Team. Privilege Team members do not identify themselves to defense team members, but rather use numerical identifiers such as "PT-8." The writing in red is consistent with the Privilege Team markings I have seen on other disks. "10018" is Mr. al



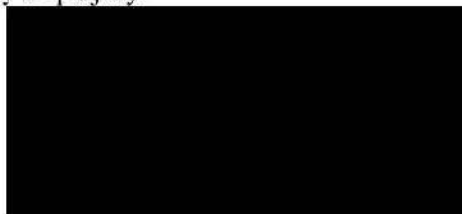
Baluchi's Internment Serial Number. "PT8" is the identifier for a Privilege Team member. And "LCM" is an acronym for "Lawyer-Client Material."

11. On paper documents, the Privilege Team uses pre-prepared stamps. The stamped writing on the photographs below is consistent with the Privilege Team stamps I have seen on many occasions. I do not know the origin of the handwriting on the right edge of each DVD sleeve; it is not consistent with the Privilege Team markings I have seen.



12. After October 2014 and before June 2015, I have seen the DVDs depicted in paragraph 8 in the possession of Mr. al Baluchi. Mr. Connell and I have watched and discussed the DVDs with Mr. al Baluchi.

I declare that the foregoing is true under penalty of perjury.



## **Attachment O**

UNCLASSIFIED//FOR PUBLIC RELEASE

From: [Thomas, Sterling R Lt Col USAF \(US\)](#)  
To: [JTFGTMO-SIA-Litigation Support](#)  
Cc: [Connell, James G III CIV \(US\)](#); [REDACTED] [PO1 USN CNO \(US\)](#)  
Subject: Seizure of Mr. al Baluchi's legal materials (DVDs)  
Date: Tuesday, June 23, 2015 9:52:11 AM  
Importance: High

---

CDR [REDACTED] & the Litigation Support Staff,

Please have the JDG return Mr. al Baluchi's DVDs. On information and belief, on or about 18 June 2015, the JDG camp commander seized Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material. To date counsel for Mr. al Baluchi have not received notice of the seizure of Mr. al Baluchi's legal materials.

This seizure could violate the attorney-client privilege and Mr. al Baluchi's right to counsel. It also appears to be in violation of Judge Pohl's protective order AE018U (p. 18-19, para.11), Privileged Written Communications, issued 6 Nov 2013.

Thank you for your prompt assistance in immediately resolving this matter. The courtesy of a reply email would be appreciated.

STERLING R. THOMAS, Lieutenant Colonel, USAF  
Defense Counsel  
Office of the Chief Defense Counsel  
Office of Military Commissions  
[REDACTED]

## **Attachment P**

UNCLASSIFIED//FOR PUBLIC RELEASE

From: [JTFGTMO-SJA-Litigation Support](#)  
To: [Thomas, Sterling R Lt Col USAF \(US\)](#); [JTFGTMO-SJA-Litigation Support](#)  
Cc: [Connell, James G III CIV \(US\)](#); [REDACTED] [PO1 USN CNO \(US\)](#)  
Subject: RE: Seizure of Mr. al Baluchi's legal materials (DVDs)  
Date: Tuesday, June 23, 2015 2:52:13 PM

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ALCON,

Re: ISN 10018 Counsel Email of 23 June 2015.

1) Your email has been received and will receive due consideration.

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Tuesday, June 23, 2015 9:52 AM  
To: JTFGTMO-SJA-Litigation Support  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: Seizure of Mr. al Baluchi's legal materials (DVDs)  
Importance: High

CDR [REDACTED] & the Litigation Support Staff,

Please have the JDG return Mr. al Baluchi's DVDs. On information and belief, on or about 18 June 2015, the JDG camp commander seized Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material. To date counsel for Mr. al Baluchi have not received notice of the seizure of Mr. al Baluchi's legal materials.

This seizure could violate the attorney-client privilege and Mr. al Baluchi's right to counsel. It also appears to be in violation of Judge Pohl's protective order AE018U (p. 18-19, para.11), Privileged Written Communications, issued 6 Nov 2013.

Thank you for your prompt assistance in immediately resolving this matter. The courtesy of a reply email would be appreciated.

STERLING R. THOMAS, Lieutenant Colonel, USAF  
Defense Counsel  
Office of the Chief Defense Counsel  
Office of Military Commissions  
[REDACTED]

## **Attachment Q**

UNCLASSIFIED//FOR PUBLIC RELEASE

From: [Thomas, Sterling R Lt Col USAF \(US\)](#)  
To: [JTFGTMO-SJA-Litigation Support](#); [JTFGTMO-SJA-Litigation Support](#); [JTFGTMO-SJA-Director](#)  
Cc: [Connell, James G III CIV \(US\)](#); [REDACTED] [PO1 USN CNO \(US\)](#)  
Subject: RE: Seizure of Mr. al Baluchi's legal materials (DVDs)  
Date: Thursday, June 25, 2015 3:11:57 PM

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CDR [REDACTED] & the Litigation Support Staff,

Could you please provide me with an update on your investigation of the 18 June 2015 seizure of Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material? If your investigation has confirmed that Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material have been seized, please note that counsel for Mr. al Baluchi still have not received notice of the seizure of Mr. al Baluchi's legal materials (see AE018U (p. 18-19, para.11), Privileged Written Communications, issued 6 Nov 2013).

A reply email is requested. Thank you for your assistance.

STERLING R. THOMAS, Lieutenant Colonel, USAF  
Defense Counsel  
Office of the Chief Defense Counsel  
Office of Military Commissions  
[REDACTED]

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

From: JTFGTMO-SJA-Litigation Support [REDACTED]  
Sent: Tuesday, June 23, 2015 2:52 PM  
To: Thomas, Sterling R Lt Col USAF (US); JTFGTMO-SJA-Litigation Support  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Seizure of Mr. al Baluchi's legal materials (DVDs)

ALCON,

Re: ISN 10018 Counsel Email of 23 June 2015.

1) Your email has been received and will receive due consideration.

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Tuesday, June 23, 2015 9:52 AM  
To: JTFGTMO-SJA-Litigation Support  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: Seizure of Mr. al Baluchi's legal materials (DVDs)  
Importance: High

CDR [REDACTED] & the Litigation Support Staff,

Please have the JDG return Mr. al Baluchi's DVDs. On information and belief, on or about 18 June



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2015, the JDG camp commander seized Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material. To date counsel for Mr. al Baluchi have not received notice of the seizure of Mr. al Baluchi's legal materials.

This seizure could violate the attorney-client privilege and Mr. al Baluchi's right to counsel. It also appears to be in violation of Judge Pohl's protective order AE018U (p. 18-19, para.11), Privileged Written Communications, issued 6 Nov 2013.

Thank you for your prompt assistance in immediately resolving this matter. The courtesy of a reply email would be appreciated.

STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel  
Office of Military Commissions





## **Attachment R**

UNCLASSIFIED//FOR PUBLIC RELEASE

From: [JTFGTMO-SJA-Litigation Support](#)  
To: [Thomas, Sterling R Lt Col USAF \(US\)](#); [JTFGTMO-SJA-Litigation Support](#); [JTFGTMO-SJA-Litigation Support](#);  
[JTFGTMO-SJA-Director](#)  
Cc: [Connell, James G III CIV \(US\)](#); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Seizure of Mr. al Baluchi's legal materials (DVDs)  
Date: Friday, June 26, 2015 5:03:47 PM

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ALCON,

Re: ISN 10018 DVD Seizure of 18 June 2015.

On 18 June 2015, JTF-GTMO seized 3 discs from ISN 10018. No USG personnel have examined the data on the discs. JTF-GTMO is aware of its responsibilities under AE 018U and will act accordingly.

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Thursday, June 25, 2015 3:12 PM  
To: JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Director  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Seizure of Mr. al Baluchi's legal materials (DVDs)

CDR [REDACTED] & the Litigation Support Staff,

Could you please provide me with an update on your investigation of the 18 June 2015 seizure of Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material? If your investigation has confirmed that Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material have been seized, please note that counsel for Mr. al Baluchi still have not received notice of the seizure of Mr. al Baluchi's legal materials (see AE018U (p. 18-19, para.11), Privileged Written Communications, issued 6 Nov 2013).

A reply email is requested. Thank you for your assistance.

STERLING R. THOMAS, Lieutenant Colonel, USAF  
Defense Counsel  
Office of the Chief Defense Counsel  
Office of Military Commissions  
[REDACTED]

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

From: JTFGTMO-SJA-Litigation Support [REDACTED]  
Sent: Tuesday, June 23, 2015 2:52 PM  
To: Thomas, Sterling R Lt Col USAF (US); JTFGTMO-SJA-Litigation Support  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Seizure of Mr. al Baluchi's legal materials (DVDs)

ALCON,

Re: ISN 10018 Counsel Email of 23 June 2015.

1) Your email has been received and will receive due consideration.

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Tuesday, June 23, 2015 9:52 AM  
To: JTFGTMO-SJA-Litigation Support  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: Seizure of Mr. al Baluchi's legal materials (DVDs)  
Importance: High

CDR [REDACTED] & the Litigation Support Staff,

Please have the JDG return Mr. al Baluchi's DVDs. On information and belief, on or about 18 June 2015, the JDG camp commander seized Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material. To date counsel for Mr. al Baluchi have not received notice of the seizure of Mr. al Baluchi's legal materials.

This seizure could violate the attorney-client privilege and Mr. al Baluchi's right to counsel. It also appears to be in violation of Judge Pohl's protective order AE018U (p. 18-19, para.11), Privileged Written Communications, issued 6 Nov 2013.

Thank you for your prompt assistance in immediately resolving this matter. The courtesy of a reply email would be appreciated.

STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel  
Office of Military Commissions

[REDACTED]

## **Attachment S**

UNCLASSIFIED//FOR PUBLIC RELEASE

From: [Thomas, Sterling R Lt Col USAF \(US\)](#)  
To: [JTFGTMO-SJA-Litigation Support](#); [JTFGTMO-SJA-Litigation Support](#); [JTFGTMO-SJA-Litigation Support](#);  
[JTFGTMO-SJA-Director](#)  
Cc: [Connell, James G III CIV \(US\)](#); [REDACTED] [PO1 USN CNO \(US\)](#)  
Subject: Investigation of 18 June 2015 Seizure of Mr. al Baluchi's legal materials (DVDs)  
Date: Monday, June 29, 2015 10:41:51 AM

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CDR [REDACTED] and Litigation Support Staff,

Thank you for the attention you have thus far dedicated to this matter.

As we noted on 23 June 2015, the three DVDs you seized may be marked attorney-client privileged and Other Case Related Material. The seizure of three of Mr. al Baluchi's legal DVDs, may (1) impugn our attorney client relationship with, and our zealous representation of Mr. al Baluchi; and (2) involve attorney work product or attorney-client privileged material. To help resolve this question please provide answers to the following questions:

1. Provide a detailed description of the markings on the 3 discs that you have seized.
2. Who was present when you seized these 3 discs (Please provide, at a minimum, the individual(s) rank, position and camp identification pseudonym)?
3. Exactly where were these 3 discs when they were seized (e.g. on Mr. al Baluchi's bed, in his legal bin)?
4. Exactly when were these 3 discs seized?
5. What justification(s) has been provided for the seizure of these 3 discs?
6. What is the name of the SJA attorney representative who provided the prior authorization for seizure of the 3 discs?
7. When was the attorney representative of the SJA notified of this seizure?
8. Provide a copy of all duplications, photographs or copies otherwise made of the 3 discs seized from Mr. al Baluchi.
9. Provide a copy of all notes/reports/investigations by whatever name JTF-GTMO may use to describe them, made by the individuals involved in the seizure and retention of Mr. al Baluchi's 3 discs.

Your prompt reply is appreciated.

STERLING R. THOMAS, Lieutenant Colonel, USAF  
Defense Counsel  
Office of the Chief Defense Counsel  
Office of Military Commissions  
[REDACTED]

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

From: JTFGTMO-SJA-Litigation Support [REDACTED]  
Sent: Friday, June 26, 2015 5:04 PM



UNCLASSIFIED//FOR PUBLIC RELEASE

To: Thomas, Sterling R Lt Col USAF (US); JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Director  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Seizure of Mr. al Baluchi's legal materials (DVDs)

ALCON,

Re: ISN 10018 DVD Seizure of 18 June 2015.

On 18 June 2015, JTF-GTMO seized 3 discs from ISN 10018. No USG personnel have examined the data on the discs. JTF-GTMO is aware of its responsibilities under AE 018U and will act accordingly.

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Thursday, June 25, 2015 3:12 PM  
To: JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Director  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Seizure of Mr. al Baluchi's legal materials (DVDs)

CDR [REDACTED] & the Litigation Support Staff,

Could you please provide me with an update on your investigation of the 18 June 2015 seizure of Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material? If your investigation has confirmed that Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material have been seized, please note that counsel for Mr. al Baluchi still have not received notice of the seizure of Mr. al Baluchi's legal materials (see AE018U (p. 18-19, para.11), Privileged Written Communications, issued 6 Nov 2013).

A reply email is requested. Thank you for your assistance.

STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel  
Office of Military Commissions

[REDACTED]

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

From: JTFGTMO-SJA-Litigation Support [REDACTED]  
Sent: Tuesday, June 23, 2015 2:52 PM  
To: Thomas, Sterling R Lt Col USAF (US); JTFGTMO-SJA-Litigation Support  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Seizure of Mr. al Baluchi's legal materials (DVDs)

ALCON,

Re: ISN 10018 Counsel Email of 23 June 2015.

1) Your email has been received and will receive due consideration.

UNCLASSIFIED//FOR PUBLIC RELEASE

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Tuesday, June 23, 2015 9:52 AM  
To: JTFGTMO-SJA-Litigation Support  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: Seizure of Mr. al Baluchi's legal materials (DVDs)  
Importance: High

CDR [REDACTED] & the Litigation Support Staff,

Please have the JDG return Mr. al Baluchi's DVDs. On information and belief, on or about 18 June 2015, the JDG camp commander seized Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material. To date counsel for Mr. al Baluchi have not received notice of the seizure of Mr. al Baluchi's legal materials.

This seizure could violate the attorney-client privilege and Mr. al Baluchi's right to counsel. It also appears to be in violation of Judge Pohl's protective order AE018U (p. 18-19, para.11), Privileged Written Communications, issued 6 Nov 2013.

Thank you for your prompt assistance in immediately resolving this matter. The courtesy of a reply email would be appreciated.

STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel  
Office of Military Commissions

[REDACTED]

## **Attachment T**



UNCLASSIFIED//FOR PUBLIC RELEASE

From: [JTFGTMO-SJA-Litigation Support](#)  
To: [Thomas, Sterling R Lt Col USAF \(US\); JTFGTMO-SJA-Litigation Support](#)  
Cc: [Connell, James G III CIV \(US\); \[REDACTED\] PO1 USN CNO \(US\)](#)  
Subject: RE: Investigation of 18 June 2015 Seizure of Mr. al Baluchi's legal materials (DVDs)  
Date: Monday, June 29, 2015 3:22:36 PM

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ALCON,

Re: ISN 10018 DVD Seizure of 18 June 2015.

- 1) We are in receipt of your email of 29 June 2015.
- 2) Respectfully request you please route discovery requests through OCP.

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Monday, June 29, 2015 10:42 AM  
To: JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Director  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: Investigation of 18 June 2015 Seizure of Mr. al Baluchi's legal materials (DVDs)

CDR [REDACTED] and Litigation Support Staff,

Thank you for the attention you have thus far dedicated to this matter.

As we noted on 23 June 2015, the three DVDs you seized may be marked attorney-client privileged and Other Case Related Material. The seizure of three of Mr. al Baluchi's legal DVDs, may (1) impugn our attorney client relationship with, and our zealous representation of Mr. al Baluchi; and (2) involve attorney work product or attorney-client privileged material. To help resolve this question please provide answers to the following questions:

1. Provide a detailed description of the markings on the 3 discs that you have seized.
2. Who was present when you seized these 3 discs (Please provide, at a minimum, the individual(s) rank, position and camp identification pseudonym)?
3. Exactly where were these 3 discs when they were seized (e.g. on Mr. al Baluchi's bed, in his legal bin)?
4. Exactly when were these 3 discs seized?
5. What justification(s) has been provided for the seizure of these 3 discs?
6. What is the name of the SJA attorney representative who provided the prior authorization for seizure of the 3 discs?
7. When was the attorney representative of the SJA notified of this seizure?
8. Provide a copy of all duplications, photographs or copies otherwise made of the 3 discs seized from Mr. al Baluchi.

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9. Provide a copy of all notes/reports/investigations by whatever name JTF-GTMO may use to describe them, made by the individuals involved in the seizure and retention of Mr. al Baluchi's 3 discs.

Your prompt reply is appreciated.

STERLING R. THOMAS, Lieutenant Colonel, USAF  
Defense Counsel  
Office of the Chief Defense Counsel  
Office of Military Commissions

[REDACTED]

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

From: JTFGTMO-SJA-Litigation Support [REDACTED]  
Sent: Friday, June 26, 2015 5:04 PM  
To: Thomas, Sterling R Lt Col USAF (US); JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Director  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Seizure of Mr. al Baluchi's legal materials (DVDs)

ALCON,

Re: ISN 10018 DVD Seizure of 18 June 2015.

On 18 June 2015, JTF-GTMO seized 3 discs from ISN 10018. No USG personnel have examined the data on the discs. JTF-GTMO is aware of its responsibilities under AE 018U and will act accordingly.

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Thursday, June 25, 2015 3:12 PM  
To: JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Director  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Seizure of Mr. al Baluchi's legal materials (DVDs)

CDR [REDACTED] & the Litigation Support Staff,

Could you please provide me with an update on your investigation of the 18 June 2015 seizure of Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material? If your investigation has confirmed that Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material have been seized, please note that counsel for Mr. al Baluchi still have not received notice of the seizure of Mr. al Baluchi's legal materials (see AE018U (p. 18-19, para.11), Privileged Written Communications, issued 6 Nov 2013).

A reply email is requested. Thank you for your assistance.

STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel

Office of Military Commissions  
[REDACTED]

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

From: JTFGTMO-SJA-Litigation Support [REDACTED]  
Sent: Tuesday, June 23, 2015 2:52 PM  
To: Thomas, Sterling R Lt Col USAF (US); JTFGTMO-SJA-Litigation Support  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Seizure of Mr. al Baluchi's legal materials (DVDs)

ALCON,

Re: ISN 10018 Counsel Email of 23 June 2015.

1) Your email has been received and will receive due consideration.

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Tuesday, June 23, 2015 9:52 AM  
To: JTFGTMO-SJA-Litigation Support  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: Seizure of Mr. al Baluchi's legal materials (DVDs)  
Importance: High

CDR [REDACTED] & the Litigation Support Staff,

Please have the JDG return Mr. al Baluchi's DVDs. On information and belief, on or about 18 June 2015, the JDG camp commander seized Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material. To date counsel for Mr. al Baluchi have not received notice of the seizure of Mr. al Baluchi's legal materials.

This seizure could violate the attorney-client privilege and Mr. al Baluchi's right to counsel. It also appears to be in violation of Judge Pohl's protective order AE018U (p. 18-19, para.11), Privileged Written Communications, issued 6 Nov 2013.

Thank you for your prompt assistance in immediately resolving this matter. The courtesy of a reply email would be appreciated.

STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel  
Office of Military Commissions  
[REDACTED]

## **Attachment U**



UNCLASSIFIED//FOR PUBLIC RELEASE

From: [Thomas, Sterling R Lt Col USAF \(US\)](#)  
To: [JTFGTMO-SJA-Litigation Support](#); [JTFGTMO-SJA-Director](#)  
Cc: [Connell, James G III CIV \(US\)](#); [REDACTED] [PO1 USN CNO \(US\)](#)  
Subject: Investigation of 18 June 2015 Seizure of Mr. al Baluchi's legal materials (DVDs)  
Date: Tuesday, June 30, 2015 8:19:34 AM

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CDR [REDACTED] and the Litigation Support Staff,

You seem to have misunderstood the intent of my questions. Allow me to re-phrase:

Counsel for Mr. al Baluchi will certainly pursue every avenue of discovery available to us. However, the fact that the Office of the Chief Prosecutor is the official gateway for discovery requests does not relieve your office (JTF-GTMO/SJA) of its obligation to abide by the Military Judge's Order (AE18U). Thank you for your prompt response to the following questions:

(1) Have the three DVDs seized by you been returned to Mr. al Baluchi? I direct you to your obligations under AE18U, Order, Privileged Written Communications, pg 18-19 paragraph 11 (c) and (d) require that if materials seized by you "are determined to be properly marked they will be returned to the Accused."

(2) Please immediately reveal the markings on the 3 seized DVDs.

a) AE18U, Order, Privileged Written Communications, pg 18-19 paragraph 11(c) Inspection of Legal Bins, requires that "if the materials originated with Defense Counsel, they shall be promptly returned to counsel." In order to determine whether the 3 DVDs "originated with Defense Counsel" and whether you have an obligation to immediately return them to defense counsel, your office must reveal the markings on the 3 seized DVDs.

b) AE18U Privileged Written Communications, pg 18-19 paragraph d(2), "If the materials originated with counsel, they shall be promptly returned to Defense Counsel." Please immediately provide a description of the markings on the 3 DVDs you have seized so that we may determine if they "originated with counsel."

(3) Whether the materials seized were "properly marked" (see AE18U, para 11 (c)) or "not properly marked", (see AE 18U, para 11 (d)(2)), Judge Pohl's order requires that you return them to counsel, if they originated with counsel.

Please immediately comply with your obligations under AE18U as set forth above. I am available to discuss this with you by phone at the numbers listed in my signature block below.

Regards,

Lt Col Thomas  
STERLING R. THOMAS, Lieutenant Colonel, USAF  
Defense Counsel  
Office of the Chief Defense Counsel  
Office of Military Commissions  
[REDACTED]

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

UNCLASSIFIED//FOR PUBLIC RELEASE

From: JTFGTMO-SJA-Litigation Support [REDACTED]  
Sent: Monday, June 29, 2015 3:22 PM  
To: Thomas, Sterling R Lt Col USAF (US); JTFGTMO-SJA-Litigation Support  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Investigation of 18 June 2015 Seizure of Mr. al Baluchi's legal materials (DVDs)

ALCON,

Re: ISN 10018 DVD Seizure of 18 June 2015.

- 1) We are in receipt of your email of 29 June 2015.
- 2) Respectfully request you please route discovery requests through OCP.

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Monday, June 29, 2015 10:42 AM  
To: JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Director  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: Investigation of 18 June 2015 Seizure of Mr. al Baluchi's legal materials (DVDs)

CDR [REDACTED] and Litigation Support Staff,

Thank you for the attention you have thus far dedicated to this matter.

As we noted on 23 June 2015, the three DVDs you seized may be marked attorney-client privileged and Other Case Related Material. The seizure of three of Mr. al Baluchi's legal DVDs, may (1) impugn our attorney client relationship with, and our zealous representation of Mr. al Baluchi; and (2) involve attorney work product or attorney-client privileged material. To help resolve this question please provide answers to the following questions:

1. Provide a detailed description of the markings on the 3 discs that you have seized.
2. Who was present when you seized these 3 discs (Please provide, at a minimum, the individual(s) rank, position and camp identification pseudonym)?
3. Exactly where were these 3 discs when they were seized (e.g. on Mr. al Baluchi's bed, in his legal bin)?
4. Exactly when were these 3 discs seized?
5. What justification(s) has been provided for the seizure of these 3 discs?
6. What is the name of the SJA attorney representative who provided the prior authorization for seizure of the 3 discs?
7. When was the attorney representative of the SJA notified of this seizure?
8. Provide a copy of all duplications, photographs or copies otherwise made of the 3 discs seized from Mr. al Baluchi.
9. Provide a copy of all notes/reports/investigations by whatever name JTF-GTMO may use to describe them, made by the individuals involved in the seizure and retention of Mr. al Baluchi's 3 discs.

UNCLASSIFIED//FOR PUBLIC RELEASE

Your prompt reply is appreciated.

STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel Office of Military Commissions

[REDACTED]

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

From: JTFGTMO-SJA-Litigation Support [REDACTED]  
Sent: Friday, June 26, 2015 5:04 PM  
To: Thomas, Sterling R Lt Col USAF (US); JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Director  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Seizure of Mr. al Baluchi's legal materials (DVDs)

ALCON,

Re: ISN 10018 DVD Seizure of 18 June 2015.

On 18 June 2015, JTF-GTMO seized 3 discs from ISN 10018. No USG personnel have examined the data on the discs. JTF-GTMO is aware of its responsibilities under AE 018U and will act accordingly.

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Thursday, June 25, 2015 3:12 PM  
To: JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Director  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Seizure of Mr. al Baluchi's legal materials (DVDs)

CDR [REDACTED] & the Litigation Support Staff,

Could you please provide me with an update on your investigation of the 18 June 2015 seizure of Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material? If your investigation has confirmed that Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material have been seized, please note that counsel for Mr. al Baluchi still have not received notice of the seizure of Mr. al Baluchi's legal materials (see AE018U (p. 18-19, para.11), Privileged Written Communications, issued 6 Nov 2013).

A reply email is requested. Thank you for your assistance.

STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel Office of Military Commissions

[REDACTED]



[REDACTED]

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

From: JTFGTMO-SJA-Litigation Support [REDACTED]  
Sent: Tuesday, June 23, 2015 2:52 PM  
To: Thomas, Sterling R Lt Col USAF (US); JTFGTMO-SJA-Litigation Support  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Seizure of Mr. al Baluchi's legal materials (DVDs)

ALCON,

Re: ISN 10018 Counsel Email of 23 June 2015.

1) Your email has been received and will receive due consideration.

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Tuesday, June 23, 2015 9:52 AM  
To: JTFGTMO-SJA-Litigation Support  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: Seizure of Mr. al Baluchi's legal materials (DVDs)  
Importance: High

CDR [REDACTED] & the Litigation Support Staff,

Please have the JDG return Mr. al Baluchi's DVDs. On information and belief, on or about 18 June 2015, the JDG camp commander seized Mr. al Baluchi's legal DVDs marked attorney-client privileged and Other Case Related Material. To date counsel for Mr. al Baluchi have not received notice of the seizure of Mr. al Baluchi's legal materials.

This seizure could violate the attorney-client privilege and Mr. al Baluchi's right to counsel. It also appears to be in violation of Judge Pohl's protective order AE018U (p. 18-19, para.11), Privileged Written Communications, issued 6 Nov 2013.

Thank you for your prompt assistance in immediately resolving this matter. The courtesy of a reply email would be appreciated.

STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel Office of Military Commissions

[REDACTED]



## **Attachment V**

UNCLASSIFIED//FOR PUBLIC RELEASE

From: [Thomas, Sterling R Lt Col USAF \(US\)](#)  
To: [JTFGTMO-SJA-Litigation Support](#); [JTFGTMO-SJA-Director](#)  
Cc: [Connell, James G III CIV \(US\)](#); [REDACTED] [PO1 USN CNO \(US\)](#)  
Subject: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs  
Date: Tuesday, July 14, 2015 2:18:19 PM  
Attachments: [2014-07-14 Commissions Special Request - Identify seized DVD markings.pdf](#)

---

CDR [REDACTED] and the Litigation Support Staff,

Attached is a Commissions Special Request form for your action. Thank you for your assistance.

Lt Col Thomas  
STERLING R. THOMAS, Lieutenant Colonel, USAF  
Defense Counsel  
Office of the Chief Defense Counsel  
Office of Military Commissions  
[REDACTED]

## **Attachment W**

UNCLASSIFIED//FOR PUBLIC RELEASE

From: [JTFTMO-SJA-Litigation Support](#)  
To: [Thomas, Sterling R Lt Col USAF \(US\)](#); [JTFTMO-SJA-Litigation Support](#)  
Cc: [Connell, James G III CIV \(US\)](#); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs  
Date: Tuesday, July 14, 2015 3:20:53 PM

---

ALOON,

Re: ISN 10018 Special Request (DVD's) of 14 July 2015.

- 1) Your special request has been received.
- 2) Please contact Mr. Clay Trivett, OCP with all requests regarding this matter.

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Tuesday, July 14, 2015 2:18 PM  
To: JTFTMO-SJA-Litigation Support; JTFTMO-SJA-Director  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

CDR [REDACTED] and the Litigation Support Staff,

Attached is a Commissions Special Request form for your action. Thank you for your assistance.

Lt Col Thomas  
STERLING R. THOMAS, Lieutenant Colonel, USAF  
Defense Counsel  
Office of the Chief Defense Counsel  
Office of Military Commissions  
[REDACTED]

## **Attachment X**

UNCLASSIFIED//FOR PUBLIC RELEASE

From: [Thomas, Sterling R Lt Col USAF \(US\)](#)  
To: [Trivett, Clayton CIV OSD OMC Prosecution](#); [Trivett, Clayton G Jr CIV \(US\)](#)  
Cc: [Connell, James G III CIV \(US\)](#); [REDACTED] [PO1 USN CNO \(US\)](#)  
Subject: FW: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs  
Date: Tuesday, July 14, 2015 4:01:44 PM  
Attachments: [2014-07-14 Commissions Special Request - Identify seized DVD markings.pdf](#)

---

Clay,

Per the request of CDR [REDACTED] Litigation Support Staff, I am contacting you regarding three legal DVDs seized from Mr. al Baluchi on or about 18 June 2015. Could you please call me at your earliest convenience? Thank you,

Sterling  
STERLING R. THOMAS, Lieutenant Colonel, USAF  
Defense Counsel  
Office of the Chief Defense Counsel  
Office of Military Commissions  
[REDACTED]

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

From: JTFGTMO-SJA-Litigation Support [REDACTED]  
Sent: Tuesday, July 14, 2015 3:21 PM  
To: Thomas, Sterling R Lt Col USAF (US); JTFGTMO-SJA-Litigation Support  
Cc: Connell, James G III CIV (US); [REDACTED] [PO1 USN CNO \(US\)](#)  
Subject: RE: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

ALCON,

Re: ISN 10018 Special Request (DVD's) of 14 July 2015.

- 1) Your special request has been received.
- 2) Please contact Mr. Clay Trivett, OCP with all requests regarding this matter.

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Tuesday, July 14, 2015 2:18 PM  
To: JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Director  
Cc: Connell, James G III CIV (US); [REDACTED] [PO1 USN CNO \(US\)](#)  
Subject: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

CDR [REDACTED] and the Litigation Support Staff,

Attached is a Commissions Special Request form for your action. Thank you for your assistance.

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Lt Col Thomas

STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel  
Office of Military Commissions



## **Attachment Y**

(pending classification review, filed under seal)



**United States v. KSM et al.**

# **APPELLATE EXHIBIT 373 (AAA)**

**(Pages 187 - 188)**

**Under Seal**

*Classified*

**Attachment Y**

**APPELLATE EXHIBIT 373 (AAA) is located in the classified annex of the original record of trial.**

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

**United States v. KSM et al.**

**APPELLATE EXHIBIT 373 (AAA)**

## **Attachment Z**

**Thomas, Sterling R Lt Col USAF (US)**

---

**From:** CLAYTOGT [REDACTED]  
**Sent:** Wednesday, July 15, 2015 5:52 PM  
**To:** Thomas, Sterling R Lt Col USAF (US)  
**Cc:** Trivett, Clayton G Jr CIV (US); Trivett, Clayton G Jr CIV (US)  
**Subject:** RE: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

Lt Col Thomas,

I just returned to the office today so my apologies in the delay getting back to you. I had not seen the email you sent yesterday because I generally only use that email address while I am in GTMO. I was able to listen to your voice mails.

Regarding the request for information you attach, we will consider that a request for discovery and we will handle it in due course. If there is any additional information you seek regarding the seizure, please put that in a separate written discovery request.

Regards,

Clay Trivett

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

**From:** Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
**Sent:** Wednesday, July 15, 2015 2:19 PM  
**To:** CLAYTOGT  
**Cc:** Trivett, Clayton G Jr CIV (US); Trivett, Clayton G Jr CIV (US)  
**Subject:** FW: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

Clay,

I am re-sending this message to an additional email address just found. Thanks for your help.

Sterling

STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel Office of Military Commissions

[REDACTED]

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

**From:** Thomas, Sterling R Lt Col USAF (US)  
**Sent:** Tuesday, July 14, 2015 4:02 PM  
**To:** Trivett, Clayton CIV OSD OMC Prosecution; Trivett, Clayton G Jr CIV (US)  
**Cc:** Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
**Subject:** FW: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

Clay,

Per the request of CDR [REDACTED] Litigation Support Staff, I am contacting you regarding three legal DVDs seized from Mr. al Baluchi on or about 18 June 2015. Could you please call me at your earliest convenience? Thank you,

Sterling  
STERLING R. THOMAS, Lieutenant Colonel, USAF  
Defense Counsel  
Office of the Chief Defense Counsel  
Office of Military Commissions  
[REDACTED]

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

From: JTFGTMO-SJA-Litigation Support [REDACTED]  
Sent: Tuesday, July 14, 2015 3:21 PM  
To: Thomas, Sterling R Lt Col USAF (US); JTFGTMO-SJA-Litigation Support  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

ALCON,

Re: ISN 10018 Special Request (DVD's) of 14 July 2015.

- 1) Your special request has been received.
- 2) Please contact Mr. Clay Trivett, OCP with all requests regarding this matter.

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Tuesday, July 14, 2015 2:18 PM  
To: JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Director  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

CDR [REDACTED] and the Litigation Support Staff,

Attached is a Commissions Special Request form for your action. Thank you for your assistance.

Lt Col Thomas

UNCLASSIFIED//FOR PUBLIC RELEASE

STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel Office of Military Commissions



## **Attachment AA**



UNCLASSIFIED//FOR PUBLIC RELEASE

From: [Thomas, Sterling R Lt Col USAF \(US\)](#)  
To: ["CLAYTOGT"](#)  
Cc: [Trivett, Clayton G Jr CIV \(US\)](#); [Trivett, Clayton G Jr CIV \(US\)](#); [Connell, James G III CIV \(US\)](#); [PO1 USN CNO \(US\)](#)  
Subject: RE: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs  
Date: Thursday, July 16, 2015 8:42:30 AM

---

Mr. Trivett,


Thank you for your reply. And I appreciate your willingness to assist in this matter. I must, however, disagree with the characterization of the question below as a request for discovery. We are at this point only trying to determine the markings on the seized DVDs.

As you are aware the military judge has chided the defense for not pursuing questions about what material has been seized from our clients.

We merely want to know how the DVDs are labeled. That information will be compared to the military judge's order to determine the appropriate course of action.

Thank you again, and please feel free to call me to discuss this matter.

Lt Col Thomas

STERLING R. THOMAS, Lieutenant Colonel, USAF  
Defense Counsel  
Office of the Chief Defense Counsel  
Office of Military Commissions  


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

From: CLAYTOGT   
Sent: Wednesday, July 15, 2015 5:52 PM  
To: Thomas, Sterling R Lt Col USAF (US)  
Cc: Trivett, Clayton G Jr CIV (US); Trivett, Clayton G Jr CIV (US)  
Subject: RE: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

Lt Col Thomas,


I just returned to the office today so my apologies in the delay getting back to you. I had not seen the email you sent yesterday because I generally only use that email address while I am in GTMO. I was able to listen to your voice mails.

Regarding the request for information you attach, we will consider that a request for discovery and we will handle it in due course. If there is any additional information you seek regarding the seizure, please put that in a separate written discovery request.

Regards,

Clay Trivett

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

From: Thomas, Sterling R Lt Col USAF (US) 

UNCLASSIFIED//FOR PUBLIC RELEASE

Sent: Wednesday, July 15, 2015 2:19 PM  
To: CLAYTOGT  
Cc: Trivett, Clayton G Jr CIV (US); Trivett, Clayton G Jr CIV (US)  
Subject: FW: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

Clay,

I am re-sending this message to an additional email address just found. Thanks for your help.

Sterling  
STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel  
Office of Military Commissions

[REDACTED]

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

From: Thomas, Sterling R Lt Col USAF (US)  
Sent: Tuesday, July 14, 2015 4:02 PM  
To: Trivett, Clayton CIV OSD OMC Prosecution; Trivett, Clayton G Jr CIV (US)  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: FW: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

Clay,

Per the request of CDR [REDACTED] Litigation Support Staff, I am contacting you regarding three legal DVDs seized from Mr. al Baluchi on or about 18 June 2015. Could you please call me at your earliest convenience? Thank you,

Sterling  
STERLING R. THOMAS, Lieutenant Colonel, USAF  
Defense Counsel  
Office of the Chief Defense Counsel  
Office of Military Commissions

[REDACTED]

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

From: JTFGTMO-SJA-Litigation Support [REDACTED]  
Sent: Tuesday, July 14, 2015 3:21 PM  
To: Thomas, Sterling R Lt Col USAF (US); JTFGTMO-SJA-Litigation Support  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: RE: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

ALCON,

Re: ISN 10018 Special Request (DVD's) of 14 July 2015.

- 1) Your special request has been received.
- 2) Please contact Mr. Clay Trivett, OCP with all requests regarding this matter.

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Tuesday, July 14, 2015 2:18 PM  
To: JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Director  
Cc: Connell, James G III CIV (US); [REDACTED] PO1 USN CNO (US)  
Subject: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

CDR [REDACTED] and the Litigation Support Staff,

Attached is a Commissions Special Request form for your action. Thank you for your assistance.

Lt Col Thomas  
STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel  
Office of Military Commissions  
[REDACTED]

## **Attachment BB**





UNCLASSIFIED//FOR PUBLIC RELEASE  
**DEPARTMENT OF DEFENSE**  
**OFFICE OF THE CHIEF DEFENSE COUNSEL**  
**OFFICE OF MILITARY COMMISSIONS**  
**1620 DEFENSE PENTAGON**  
**WASHINGTON, DC 20301-1620**

24 July 2015

MEMORANDUM FOR Trial Counsel

FROM: Sterling R. Thomas, Lt Col, USAF, Defense Counsel for Mr. al Baluchi

SUBJECT: DEFENSE REQUEST FOR DISCOVERY  
**Seizure of Legal Materials Subsequent to 14 August 2014**

**Discovery Request**

Defendant, by and through undersigned counsel pursuant to RMC 701, 10 U.S.C. § 949p-4, Common Article III to Geneva Convention (III) Relative to the Treatment of Prisoners of War, the Due Process Clause of the Fifth Amendment, the Confrontation Clause to the Sixth Amendment, and the Compulsory Process Clause of the Sixth Amendment to the United States Constitution, hereby requests that the government produce the following discovery:

**Definitions**

In this request, the following definitions shall govern:

“Document” means any recorded information, regardless of the nature of the medium or the method or circumstances of recording.

“Exploitation” means review, “cursory scan,” reading, watching, copying, photographing, conversion to digital format, or examination for any purpose.

“Information” means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, and to include handwritten, recorded, or electronic documents.

“Produce” means to convey to the defense without redaction (except as authorized by the military commission pursuant to MCRE 505) or alteration of any electronically stored information associated with the document. If the military commission authorizes substitutions or redactions pursuant to MCRE 505, the word “produce” includes a notation of the Appellate Exhibit number of the order authorizing the substitutions or redactions. To the extent that responsive documents are subject to the attorney-client or other applicable privilege, the word “produce” means to provide a privilege log of any withheld information or documents, along with the facts disclosed in the responsive documents that are not communications protected by attorney-client privilege, and documents attached and/or incorporated into the responsive

DR-222-AAA  
2015-07-24

documents that are not otherwise exempt.

“Seizure” means the initial taking of possession and the continued handling, transfer, and storage until such time as the materials were or are returned to Mr. al Baluchi. “Seized,” as used in this request, is an adjective form of “seizure,” and has the same meaning.

### **Background**

In AE018U, the military commissions trial judiciary issued an order establishing handling procedures for privileged communications to include attorney-client privileged communications and all other case-related materials. On at least three occasions in the past year, JTF-GTMO has seized Mr. al Baluchi’s legal materials. One of those events, on 14 August 2014, was the subject of DR-185-AAA. On information and belief, JTF-GTMO seized additional legal materials on or about 15 March 2015 and 18 June 2015. At least one disk remains out of Mr. al Baluchi’s control as of this writing.

### **Request**

- (1) Please produce all documents and information relating to any seizure and exploitation of materials associated with Mr. al Baluchi subsequent to 14 August 2014, to include any and all notes, reports, and investigation materials by whatever name.
- (2) Please provide all documents and information relating to any policy or guidance, formal or otherwise, relating to the seizure and exploitation of materials associated with Mr. al Baluchi subsequent to 14 August 2014.
- (3) Please produce any seized material associated with Mr. al Baluchi which has not already been returned to Mr. al Baluchi.

Thank you for your prompt attention to this matter. Please do not hesitate to contact me if you require any clarifications or additional information.

Respectfully submitted,

//s//

Sterling R. Thomas  
Lt Col, USAF  
Counsel for Mr. al Baluchi

DR-222-AAA  
2015-07-24



## **Attachment CC**

**Thomas, Sterling R Lt Col USAF (US)**

---

**From:** CLAYTOGT [REDACTED]  
**Sent:** Wednesday, July 29, 2015 6:06 PM  
**To:** Thomas, Sterling R Lt Col USAF (US); Connell, James G III CIV (US); Baker, Krystal A PO1 USN CNO (US)  
**Cc:** Trivett, Clayton G Jr CIV (US); Trivett, Clayton G Jr CIV (US); NICOLEAT; JEFFREDG; Martins, Mark S BG USARMY OSD OMC OCP (US); ROBERTLS; EDWARDR; RUDOLPPG; DALEJC  
**Subject:** RE: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

Lt Col Thomas,

In response to your request below, we have verified through JTF-GTMO that there were three discs that were seized, which were marked as follows: Two of the discs were marked "Lawyer-Client Privileged Communication Under MCRE 502" and one of the discs was marked "Military Commissions Other Case Related Material."

Regards,

Clay Trivett

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Thursday, July 16, 2015 8:42 AM  
To: CLAYTOGT  
Cc: Trivett, Clayton G Jr CIV (US); Trivett, Clayton G Jr CIV (US); Connell, James G III CIV (US); Baker, Krystal A PO1 USN CNO (US)  
Subject: RE: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

Mr. Trivett,

Thank you for your reply. And I appreciate your willingness to assist in this matter. I must, however, disagree with the characterization of the question below as a request for discovery. We are at this point only trying to determine the markings on the seized DVDs.

As you are aware the military judge has chided the defense for not pursuing questions about what material has been seized from our clients.

We merely want to know how the DVDs are labeled. That information will be compared to the military judge's order to determine the appropriate course of action.

Thank you again, and please feel free to call me to discuss this matter.

Lt Col Thomas

STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel Office of Military Commissions

[REDACTED]

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

From: CLAYTOGT [REDACTED]  
Sent: Wednesday, July 15, 2015 5:52 PM  
To: Thomas, Sterling R Lt Col USAF (US)  
Cc: Trivett, Clayton G Jr CIV (US); Trivett, Clayton G Jr CIV (US)  
Subject: RE: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

Lt Col Thomas,

I just returned to the office today so my apologies in the delay getting back to you. I had not seen the email you sent yesterday because I generally only use that email address while I am in GTMO. I was able to listen to your voice mails.

Regarding the request for information you attach, we will consider that a request for discovery and we will handle it in due course. If there is any additional information you seek regarding the seizure, please put that in a separate written discovery request.

Regards,

Clay Trivett

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Wednesday, July 15, 2015 2:19 PM  
To: CLAYTOGT  
Cc: Trivett, Clayton G Jr CIV (US); Trivett, Clayton G Jr CIV (US)  
Subject: FW: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

Clay,

I am re-sending this message to an additional email address just found. Thanks for your help.

Sterling

STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel Office of Military Commissions

[REDACTED]

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

From: Thomas, Sterling R Lt Col USAF (US)  
Sent: Tuesday, July 14, 2015 4:02 PM  
To: Trivett, Clayton CIV OSD OMC Prosecution; Trivett, Clayton G Jr CIV (US)  
Cc: Connell, James G III CIV (US); Baker, Krystal A PO1 USN CNO (US)

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Subject: FW: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

Clay,

Per the request of CDR [REDACTED] Litigation Support Staff, I am contacting you regarding three legal DVDs seized from Mr. al Baluchi on or about 18 June 2015. Could you please call me at your earliest convenience? Thank you,

Sterling  
STERLING R. THOMAS, Lieutenant Colonel, USAF  
Defense Counsel  
Office of the Chief Defense Counsel  
Office of Military Commissions  
[REDACTED]

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

From: JTFGTMO-SJA-Litigation Support [REDACTED]  
Sent: Tuesday, July 14, 2015 3:21 PM  
To: Thomas, Sterling R Lt Col USAF (US); JTFGTMO-SJA-Litigation Support  
Cc: Connell, James G III CIV (US); Baker, Krystal A PO1 USN CNO (US)  
Subject: RE: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

ALCON,

Re: ISN 10018 Special Request (DVD's) of 14 July 2015.

- 1) Your special request has been received.
- 2) Please contact Mr. Clay Trivett, OCP with all requests regarding this matter.

Thank you.

Very Respectfully,

LSS

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

From: Thomas, Sterling R Lt Col USAF (US) [REDACTED]  
Sent: Tuesday, July 14, 2015 2:18 PM  
To: JTFGTMO-SJA-Litigation Support; JTFGTMO-SJA-Director  
Cc: Connell, James G III CIV (US); Baker, Krystal A PO1 USN CNO (US)  
Subject: Commissions Special Request - Identify Markings on 3 Seized Legal DVDs

CDR [REDACTED] and the Litigation Support Staff,

Attached is a Commissions Special Request form for your action. Thank you for your assistance.

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Lt Col Thomas

STERLING R. THOMAS, Lieutenant Colonel, USAF Defense Counsel Office of the Chief Defense Counsel Office of Military Commissions



## **Attachment DD**



lawyers with regard to Mr. Sheikh Mohammed. Mr. Binalshibh has not selected you as counsel in this case. You submitted a notice, that's true. But he has not selected you as counsel in this case.

I'm willing to provide the same sort of window for further discussion as far as having you for the time being be viewed as a person present at the counsel table and at the discretion of the Military Judge under R.M.C. 506.

DC [MR DURKIN]: Could I just speak for one second on that.

MJ [COL KOHLMANN]: No, I'm going to move on to the next person.

DC [MR DURKIN]: I just want to clarify whether that's his intention, if he still has lawyers, whether he --

MJ [COL KOHLMANN]: Okay. Go ahead. I'll give you a moment. Go ahead.

DC [MR DURKIN]: I understand that, Your Honor.

MJ [COL KOHLMANN]: Okay. Thank you. Mr. Ali.

Mr. Ali, pursuant to the Manual for Military Commissions, you are represented by Lieutenant Commander Brian Mizer, your detailed defense counsel, and Major Amy Fitzgibbons, your assistant detailed defense counsel. Military detailed defense counsel are provided to you --

Mr. Durkin and Commander Lachelier, you all need to move apart because you're blocking my view entirely. Thank you. Commander Hatcher. That's perfect.

Those persons have been appointed to represent you as your detailed military defense counsel. Detailed military defense counsel are provided to you free of charge. Do you understand that?

ACC [MR ALI]: Yes, I do.

MJ [COL KOHLMANN]: You may also request that a different military lawyer represent you. If the person that you requested is reasonably available, he or she would be appointed to represent you as your detailed defense counsel. If you are represented as -- excuse me.

If you are represented by a detailed defense counsel that you picked, then the ones that were appointed for you would normally be excused. However, you could request that the ones that have been detailed continue to represent you along with the one that you picked. Do you understand that?

ACC [MR ALI]: Well, I do. But I personally not satisfied with the whole process at all. Since from the very beginning, I can see the way legal representation happened is not impartial.

I am not allowed to meet or talk with my lawyer freely. And they are not allowed to meet or talk as well.

I cannot open my mail or read my papers. I feel that the government is trying to compromise me from the beginning.

So I don't want to bother you or everybody here to work with lawyers or simply consider myself person having lawyers, because what happens is I am here a few hours in the Court and I am back in my cell 24/7.

I am living with my conscience. I cannot -- my conscience cannot accept that I am having lawyer. In reality the lawyer cannot do anything for me, he cannot talk, cannot represent my best interests. Unfortunately the lawyers, the standard lawyer -- no offense, lawyers. No offense given.

They have different standards here. I am in the wrong court. I am not a criminal. My case is political. And simply criminal lawyers, they have different standards working on cases. Different standards in dropping or dealing with charges. The same goes who are representing interests.

We all here feel that lawyers simply are not representing our interests, that they are representing maybe their interests. Maybe their interests are to drop all charges somehow. But that's not my point. The things at the baseline, there is a corruption. I am here after five years of torture. I see that they are stopping me. I don't bother you, I don't bother you. Okay. I won't say

it.

It doesn't make any sense that a court bring me into justice after five years. That's very shameful, I don't know how American people would consider it. Justice failed to try me for five years. The government, the American government declares that they are maintaining modern human rights.

This power, this government failed to treat me as a human for all these years, five years. My conscience does not allow me to participate or accept any kind of judgments, any kind of accusation or whatsoever legally. Thanks. I know I have been detailed with lawyers and government trying to remind me of favor, giving me free of charge lawyers. Even though the government tortured me free of charge for all these years.

My point is I cannot accept lawyers under this condition. The lawyers here today are decoy or for decoration, they are not for real job. I think they can feel that. They cannot talk on our behalf. So from the time our charge have been served until now, ruled and changed -- not changed, maybe fabricated, there is no rule simply.

I have conscience, Mr. Judge. And my conscience does not accept this kind of rule that we're dealing. I cannot accept the lawyers working in this style

that -- to compromise me or themselves somehow. Therefore, I just want to represent myself. And I am considering these proceedings are not fair.

The fairness is highly been questioned. And I can see that the unfairness transcending itself from the beginning, the very beginning that said -- what happened? Are you hearing me? Yeah, the way I found when my lawyers requested for continuance.

I have three lawyers I have met. Major Amy just came today, I haven't seen her before. Mr. Mizer, he doesn't know about my case. He was detailed as my lawyer since April 8. He doesn't know about my case as any like normal American citizen, that's his knowledge about my case.

And I go up today to the Court. I'm supposed to have developed a kind of attorney-client relationship which I haven't. Mr. Mizer couldn't read my mails, couldn't accept any papers from me. Simply I felt Mr. Mizer was a signboard that the government using, hey, we're giving these people a lawyer, we're giving him full legal representation rights.

Mr. Judge, I cannot accept this condition. Therefore, I will be at my case myself. And I consider everything this is happening here unfair and unjust. And I don't want to put the Lord in my case. So the government

~~TS//SI~~

1 in my case. So the government will tell, hey, he has a lawyer and  
2 they have everything.

3 If the government gave me lawyer first that was arrested, I  
4 would have appreciated that unquestionably. But it's been five years  
5 I've been deprived from all rights, very basic human rights. Until  
6 now I am under threat. People who mistreated me, they gave me  
7 threat.

8 They threat to me ahead of time. Things I might say here  
9 might affect my confinement there. I'm staying a few hours in the  
10 Court and I'm going back to them. I know which kind of--

11 MJ [COL KOHLMANN]: Hold on just a second. Mr. Ali, you are--  
12 when you're expressing to me what I understand are reasons why you  
13 might elect or not elect to exercise your counsel rights at this  
14 time, what I'm trying to do at this point right now--and whether you  
15 elect them or not elect to exercise them is entirely up to you.

16 And whether you have good reasons for doing it or not good  
17 reasons to doing it or reasons that I might agree with it or somebody  
18 else might agree with it don't really matter. You need to make the  
19 choice with regard to your counsel rights that you believe is the  
20 right decision for you based on philosophy, what you think about  
21 these proceedings, that at the end of the discussion is up to you.

22 What I'm trying to do here right now first is ensure that  
23 you understand the rights that you have and the options you have.

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~~TS//SI~~



## **Attachment EE**

(hand delivered, filed under seal)

**United States v. KSM et al.**

# **APPELLATE EXHIBIT 373 (AAA)**

**(Page 213)**

**Under Seal**

*Classified*

**Attachment EE**

**APPELLATE EXHIBIT 373 (AAA) is located in the classified annex of the original record of trial.**

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

**United States v. KSM et al.**

**APPELLATE EXHIBIT 373 (AAA)**

## **Attachment FF**

(hand delivered, filed under seal)

**United States v. KSM et al.**

# **APPELLATE EXHIBIT 373 (AAA)**

**(Page 215)**

**Under Seal**

*Classified*

**Attachment FF**

**APPELLATE EXHIBIT 373 (AAA) is located in the classified annex of the original record of trial.**

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

**United States v. KSM et al.**

**APPELLATE EXHIBIT 373 (AAA)**

## **Attachment GG**

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

UNITED STATES OF AMERICA

**DRAFT ORDER**

v.

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

\_\_\_\_ September 2015

Mr. al Baluchi has requested to maintain UNDER SEAL the following attachments to  
AE373, Defense Motion to Dismiss for Government Intrusion into Attorney-Client Relationship:

Attachment E, [REDACTED]; Attachment K, [REDACTED]  
[REDACTED] Attachment M, [REDACTED] Attachment EE,  
[REDACTED] Attachment FF, [REDACTED]

Mr. al Baluchi’s request is granted. IT IS HEREBY ORDERED that Attachments E, K,  
M, EE, and FF to AE373 shall be kept UNDER SEAL and not made available to the government  
or other defense counsel.

SO ORDERED:

DATED: \_\_\_\_\_

\_\_\_\_\_  
James L. Pohl  
COL, JA, USA  
Military Judge