

MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA	AE 980 (AAA)
v.	<b>Mr. al Baluchi’s Motion to Cancel Military Commission Sessions During Government Appeal of AE 942SSSS Ruling</b>
KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN ‘ATTASH, ALI ABDUL-AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI	29 July 2025

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

**2. Relief Sought:** Mr. al Baluchi respectfully moves to cancel all scheduled military commission sessions during the government’s appeal of AE 942SSSS Ruling. This cancellation will bring the military commission into compliance with Rule for Military Commissions 908(b), which states that “no session of the military commission may proceed pending disposition by the Court of Military Commission Review of the appeal, except . . . solely as to charges and specifications not affected by the ruling or order.”

**3. Burden of Proof:** As the moving party, Mr. al Baluchi bears the burden of proof.

**4. Facts:**

a. On 11 April 2025, the military commission issued AE 942SSSS Ruling, suppressing Mr. al Baluchi’s Letterhead Memorandum (LHM) statements as involuntary and obtained by torture and cruel, inhuman, or degrading treatment.

b. On 16 April 2025, the government filed AE 942TTTT (GOV) Government Certificate of Notice of Appeal, notifying the military commission that it was appealing AE 942SSSS Ruling to the United States Court of Military Commission Review (U.S.C.M.C.R).

c. On 28 May 2025, the government filed the Brief on Behalf of Appellant before the U.S.C.M.C.R.<sup>1</sup>

d. On 18 July 2025, Mr. al Baluchi filed the Brief on Behalf of Appellee before the U.S.C.M.C.R.<sup>2</sup>

e. On 22 July 2025, the military commission issued AE 953 (Eleventh Amend) Eleventh Amended Scheduling Order, cancelling hearings in August 2025 and ordering that hearings starting in September 2025 proceed as scheduled.

f. On 24 July 2025, Mr. Mohammad, Mr. bin ‘Atash, and Mr. al Hawsawi filed AE 953A (KSM WBA MAH), moving to cancel the pretrial hearings scheduled for 1-5 September 2025 because they must continue to abide by the terms of their pretrial agreements (PTAs)—which include a promise to refrain from further litigation—and would therefore be unable to participate while they pursue further appellate litigation in the D.C. Circuit.<sup>3</sup>

g. On 28 July 2025, Mr. al Baluchi filed AE 953C (AAA) Notice of Declination of Automatic Joinder to AE 953A (KSM WBA MAH). In that notice Mr. al Baluchi indicated that he would file AE 953D (AAA) Statement of Separate Position and Motion to Cancel Hearings During the Government Appeal of AE 942SSSS Ruling.<sup>4</sup>

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<sup>1</sup> See Brief on Behalf of Appellant, *United States of America v. Ali Abdul Aziz Ali*, No. 25-001 (U.S.C.M.C.R. 28 May 2025).

<sup>2</sup> See Brief on Behalf of Appellee, *United States of America v. Ali Abdul Aziz Ali*, No. 25-001 (U.S.C.M.C.R. 18 July 2025).

<sup>3</sup> AE 953A (KSM WBA MAH) at 5-7. Mr. Mohammad, Mr. bin ‘Atash, and Mr. al Hawsawi also noted that while the government’s appeal of the suppression of Mr. al Baluchi’s LHM statements remains pending, “the Commission is automatically stayed under R.M.C. 908(b)(4).” *Id.* at 8; *see also id.* at 1-2 (“Mr. al Baluchi’s case is indefinitely stayed pending the Government’s interlocutory appeal to the Court of Military Commissions Review (C.M.C.R.) of the Commission’s ruling suppressing his 2007 statements to law enforcement.”). Mr. al Baluchi adopts this position; in his motion he further explains why, under R.M.C. 908(b), the military commission cannot lawfully hold any sessions until the government’s appeal of AE 942SSSS Ruling is resolved.

<sup>4</sup> After the issuance of AE 953 (Twelfth Amend) cancelling the 1-5 September 2025 hearings, the Trial Judiciary assigned a new AE number for AE 953D (AAA), renaming it as AE 980 (AAA).

h. On 29 July 2025, the military commission issued AE 953 (Twelfth Amend) Twelfth Amended Scheduling Order, cancelling the 1-5 September 2025 hearings and ordering that hearings starting on 22 September 2025 proceed as scheduled. The military commission also issued AE 953D Ruling, denying AE 953A (KSM WBA MAH) as moot because the military commission independently cancelled the 1-5 September 2025 hearings.<sup>5</sup>

i. The government's Reply Brief before the U.S.C.M.C.R. is currently due 4 August 2025.<sup>6</sup> Both parties have requested oral argument.

## **5. Law and Argument:**

The government's interlocutory appeal of AE 942SSSS Ruling before the U.S.C.M.C.R. operates as an automatic stay on military commission sessions during the appeal.<sup>7</sup> Rule for Military Commissions 908(b) unambiguously establishes that the military commission cannot hold any sessions during the pendency of the government's appeal of the suppression of Mr. al Baluchi's LHM statements.

Citing R.M.C. 908(b)(3), the government filed AE 942TTTT (GOV) Certificate of Notice of Appeal on 16 April 2025, certifying that their appeal of AE 942SSSS Ruling "is not taken for the purpose of delay" and that "the evidence excluded is substantial proof of a fact material in the proceeding."<sup>8</sup> The government also certified that "[t]he Ruling affects all of the Charges and Specifications, only insofar as the statements Mr. Ali made to law enforcement implicate him in

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<sup>5</sup> AE 953D Ruling at 1.

<sup>6</sup> See AE 953A (KSM WBA MAH), Att. B.

<sup>7</sup> See R.M.C. 908(b)(3); R.M.C. 908(b)(4).

<sup>8</sup> AE 942TTTT (GOV) at 2.

all of the charged misconduct, but the Charges and Specifications remain legally valid and viable.”<sup>9</sup>

By filing its notice of appeal under this rule and certifying that AE 942SSSS Ruling affects all of the charges and specifications, the government has barred the military commission from holding any sessions during the pendency of the appeal. Pursuant to R.M.C. 908(b)(4), “[u]pon written notice to the military judge under subsection (b)(3) of this rule, the ruling or order that is the subject of the appeal is automatically stayed and *no session of the military commission may proceed* pending disposition by the Court of Military Commission Review of the appeal, except that solely as to charges and specifications not affected by the ruling or order, . . . [m]otions may be litigated, in the discretion of the military judge, at any point in the proceedings.”<sup>10</sup> R.M.C. 908(b)(4) is based on its courts-martial analogue, R.C.M. 908(b)(4), which contains identical language prohibiting any session of a court-martial from proceeding during the pendency of an appeal that affects all charges and specifications.

In light of the government’s certification that the suppression of Mr. al Baluchi’s LHM statements affects all of the charges and specifications, R.M.C. 908(4)(b) plainly establishes that “no session of the military commission may proceed pending disposition” of the government’s

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<sup>9</sup> AE 942TTTT (GOV) at 1. The government reaffirmed this position in its brief before the U.S.C.M.C.R. *See* Brief on Behalf of Appellant, *United States of America v. Ali Abdul Aziz Ali*, No. 25-001 (U.S.C.M.C.R. 28 May 2025) at 13 n.46.

<sup>10</sup> R.M.C. 908(b)(4) (emphasis added). This rule sets forth two other exceptions to the suspension requirement of military commission sessions, neither of which is applicable here. With respect to charges or specifications not affected by the ruling or order being appealed, R.M.C. 908(b)(4)(B) provides that, “When trial on the merits has not begun, (i) a severance may be granted upon request of all the parties; (ii) a severance may be granted upon request of the accused and when appropriate under R.M.C. 906(b)(9).” Second, R.M.C. 908(b)(4)(C) provides that, “When trial on the merits has begun but has not been completed, a party may, on that party’s request and in the discretion of the military judge, present further evidence on the merits.” Because the parties do not request severance and trial has not yet begun, these exceptions do not apply.

appeal.<sup>11</sup> No exception to the prohibition on holding any military commission sessions during the appeal applies here, since the exceptions to the rule apply “solely to charges and specifications not affected by the ruling or order.”

The government may argue that military commission proceedings unrelated to the subject of the appeal may proceed, in light of its claim that AE 942SSSS Ruling affects all of the charges and specifications “only insofar as the statements Mr. Ali made to law enforcement implicate him in all of the charged misconduct, but the Charges and Specifications remain legally valid and viable.”<sup>12</sup> But the government has no legal support for this argument. The language of R.M.C. 908(b)(4) is clear and unambiguous, and provides no exception to the automatic suspension of proceedings simply because the government claims the ruling being appealed does not affect the “valid[ity]” or “viab[ility]” of the charges and specifications. Under these circumstances, the military commission is required to give effect to the plain meaning of R.M.C. 908(b)(4), rather than seek out an unwritten exception to its mandate.<sup>13</sup> The plain language of the rule makes clear that, because AE 942SSSS Ruling affects all charges and specifications, the military commission cannot hold any sessions until the government’s appeal is resolved.

**6. Conclusion:** Because the government’s interlocutory appeal of AE 942SSSS Ruling before the U.S.C.M.C.R. prohibits the military commission from holding any sessions, all hearings scheduled during the pendency of the appeal must be cancelled.

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<sup>11</sup> See also R.C.M. 908(b)(4) and Article 62, the Court-Martial analogues to R.M.C. 908(b)(4), which also establishes that filing notice of appeal under this rule will automatically stay the proceedings, regardless of judicial action.

<sup>12</sup> AE 942TTTT (GOV) at 1.

<sup>13</sup> See *United States v. Hunter*, 65 M.J. 399, 401 (C.A.A.F. 2008) (“Ordinary rules of statutory construction apply in interpreting the R.C.M.”); *United States v. Tyler*, 81 M.J. 108, 113 (C.A.A.F. 2021) (“It is a general rule of statutory construction that if a statute is clear and unambiguous—that is, susceptible to only one interpretation—we use its plain meaning and apply it as written.”).

**7. Oral Argument:** Mr. al Baluchi does not request oral argument.

**8. Witnesses:** None at this time.

**9. Certificate of Conference:** The government opposes this motion.

**10. List of Attachments:**

A. Certificate of Service

Very respectfully,

//s//

JAMES G. CONNELL, III  
Learned Counsel

//s//

ALKA PRADHAN  
Defense Counsel

//s//

DEFNE OZGEDIZ  
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MAJ, JA, USA  
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JENNIFER JOSEPH  
LCDR, JAGC, USN  
Defense Counsel

*Counsel for Mr. al Baluchi*

# **Attachment A**

**CERTIFICATE OF SERVICE**

I certify that on the 29th day of July, 2025, 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*