

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

AE373A (AAA Sup)

Mr. al Baluchi's Supplement
to AE373A (AAA) Defense Motion to Compel
Government to Produce Discovery Regarding
Its Intrusion into Attorney-Client Relationship

12 May 2016

1. **Timeliness:** This supplemental filing is timely per AE373-8 (RUL)(AAA).
2. **Affirmative Statement:** This Supplement contains additional facts not known or available at the time of filing of AE373A (AAA), Defense Motion to Compel Government to Produce Discovery Regarding its Intrusion into Attorney-Client Relationship, 22 September 2015, nor in the Defense reply.
3. **Supplemental Facts:**
 - a. On 21 September 2015, counsel for Mr. al Baluchi filed AE373, a Motion to Dismiss for Government Intrusion into Attorney-Client Relationship.
 - b. On 22 September 2015, counsel for Mr. al Baluchi filed AE373A, a Motion to Compel the Government to Produce Discovery Regarding its Intrusion into the Attorney-Client Relationship.
 - c. On 28 January 2016, the defense made a supplemental discovery request, DR-222C-AAA, for certain materials relevant to the two pending motions. That request followed multiple prior requests for discovery related to the pending motions.
 - d. On 26 February 2016, the government provided an initial response to that request.
 - e. On 9 March 2016, the government filed AE373D and AE373E, responses to the two motions cited above.

f. On 15 March 2016, counsel for Mr. al Baluchi filed AE373-3 (EXT), a request for an extension of time to reply to the government's response to the Motion to Dismiss until the related discovery issue in AE373A was resolved. That request was granted.

g. On 16 March 2016, counsel for Mr. al Baluchi filed AE373F, a reply to the government's filing in AE373D.

h. On 4 May 2016, counsel for Mr. al Baluchi received, via email, a letter from the prosecution further responding to the discovery requests in DR-222C-AAA. This letter is the document with which Mr. al Baluchi now supplements his prior filing.

3. **Conference with Opposing Counsel:** As noted in AE373-7(MFL)(AAA), the prosecution has no objection to the filing of this supplement.

4. **Attachments:**

A. Certificate of Service

B. Prosecution Response to 28 January 2015 Request for Discovery (DR-222C-AAA), dated 4 May 2016.

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 12th day of May, 2016, 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

Attachment B



OFFICE OF THE
CHIEF PROSECUTOR

DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF PROSECUTOR OF MILITARY COMMISSIONS
1610 DEFENSE PENTAGON
WASHINGTON, DC 20301-1610

4 May 2016

MEMORANDUM FOR Defense Counsel for Ali Abdul Aziz Ali

SUBJECT: Prosecution Response to 28 January 2015 Request
for Discovery (DR-222C-AAA)

1. The Prosecution received the Defense request for discovery on 28 January 2016. The Prosecution hereby responds to the Defense request.
2. The Defense acknowledges it received discovery relating to the seizure of several DVDs. Specifically, the Prosecution provided the defense with 80 pages of responsive documentation (Bates numbers MEA-DR222-AAA-000001-79 and MEA-DRB-AAA 000001-2). The Prosecution does not intend to provide additional discovery on this issue.
3. The Defense requests that the government produce the discovery described below.

Please identify the following potential witnesses:

- a. Captain [REDACTED]
- b. Camp 7 Officer in Charge June through August 2015;
- c. Watch Commander SOO #1464;
- d. [REDACTED] Tier Supervisor SOO #1532;
- e. Guard SOO #1462;
- f. SOO# 1478.

The Prosecution views this request as a request for discovery (specifically for identifying information) as opposed to a request for witnesses for a hearing. The Prosecution again declines to produce the true names of these individuals. However, the Prosecution is not denying the Defense the right to access to these individuals.

The Defense should submit a request to interview the above-listed individuals, which the Prosecution will forward to JTF-GTMO.

4. The Defense requests all documents and information relating to the content, seizure, and/or exploitation of the seized DVDs, including but not limited to the following:

a. Any document describing or memorializing any meeting or conversation regarding the seized DVDs, including any notes in a green notebook from any meeting involving Captain [REDACTED] on 2 June 2015;

As to your request for "Any document describing or memorializing any meeting or conversation regarding the seized DVDs," to the extent it seeks information over and above the 80 pages of documents you have already received, this request is overbroad.

As to your request for any "notes in a green notebook from any meeting involving Captain [REDACTED] on 2 June 2015, Captain [REDACTED] statement indicated what he told the OIC, and that the OIC simply made a short note of what he was told. The OIC then asked Captain [REDACTED] to write a statement, which he did, and which was provided to you. The Prosecution inquired and has verified that there are no annotations regarding the seizures of the DVDs in any of his green leader books.

b. Any communication from Captain [REDACTED] to Camp 7 leadership;

The request for "any communication from Captain [REDACTED] to Camp 7 leadership" is overbroad in scope.

c. Any communication between or among Camp 7 personnel, Joint Detention Group (JDG) personnel, and other Joint Task Force Guantanamo Bay (JTFGTMO) personnel;

The Defense does not cite to any specific theory of relevance that would reasonably warrant production of the requested information, nor does the Defense request appear to be material to the preparation of the defense, pursuant to R.M.C. 701. Therefore, the Prosecution respectfully declines to produce the requested information at this time.

d. Any communication between or among JTF-GTMO personnel, Office of the Chief Prosecutor (OCP) personnel, Office of Military Commissions (OMC) personnel (including but not limited to the Trial Judiciary), Department of Defense

Office of General Counsel (OGC) personnel, United States Southern Command (SOUTHCOM) personnel, United States Department of Justice (DOJ) personnel, Federal Bureau of Investigation (FBI) personnel, Central Intelligence Agency (CIA) personnel, or other Intelligence Community (IC) personnel;

The Defense does not cite to any specific theory of relevance that would reasonably warrant production of the requested information, nor does the Defense request appear to be material to the preparation of the defense, pursuant to R.M.C. 701. Therefore, the Prosecution respectfully declines to produce the requested information at this time.

e. Any document describing the contents of the seized DVDs, including any report of forensic or other examination.

The Defense does not cite to any specific theory of relevance that would reasonably warrant production of the requested information, nor does the Defense request appear to be material to the preparation of the defense, pursuant to R.M.C. 701. Therefore, the Prosecution respectfully declines to produce the requested information at this time.

5. The Defense also requests all documents and information regarding the chain of custody of the seized DVDs, including but not limited to the following:

a. An unredacted version of MEA-DR 222-AAA-000065 through -72;

These documents are redacted in order to protect identities or other information identifying government personnel who are, or have been, connected with DoD detention operations. While the Prosecution would be willing to provide the Defense access to identifying information for certain JTF personnel following a justified discovery request for that individual, it is simply not required under R.M.C. 701, nor is the Prosecution willing to provide the Defense access to the identifying information for all of the JTF-GTMO personnel who may be identified in various JTF-GTMO records. As such, the Prosecution respectfully declines to produce unredacted versions of the requested documents.

b. Hand receipts;

The Defense does not cite to any specific theory of relevance that would reasonably warrant production of the requested information, nor does the Defense request appear to be material to the preparation of the defense, pursuant to R.M.C. 701. Therefore, the Prosecution respectfully declines to produce the requested information at this time.

c. Forms SD-120; (receipt for classified material)

The Defense does not cite to any specific theory of relevance that would reasonably warrant production of the requested information, nor does the Defense request appear to be material to the preparation of the defense, pursuant to R.M.C. 701. Therefore, the Prosecution respectfully declines to produce the requested information at this time.

d. Courier letters.

The Defense does not cite to any specific theory of relevance that would reasonably warrant production of the requested information, nor does the Defense request appear to be material to the preparation of the defense, pursuant to R.M.C. 701. Therefore, the Prosecution respectfully declines to produce the requested information at this time.

Respectfully submitted,

//s//

Clay Trivett
Managing Trial Counsel

Nicole A. Tate
Assistant Trial Counsel