

**Military Commissions Trial Judiciary
Guantanamo Bay, Cuba**

UNITED STATES OF AMERICA

v.

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

AE 020A

**Supplemental Motion of the
American Civil Liberties Union**
for Public Access to Proceedings and
Records

May 3, 2012

- 1. Timeliness.** This supplemental motion is timely filed.
- 2. Relief Sought.** The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU"), respectfully request that this Military Commission: (1) not grant the government's Motion to Protect Against Disclosure of National Security Information (AE 013) ("Gov't Mot.") at defendants' May 5, 2012 arraignment without first providing the ACLU an opportunity to be heard on its Motion for Public Access to Proceedings and Records, filed on May 2, 2012 (AE 020) ("ACLU Mot."), and (2) issue an order permitting one of the undersigned counsel to travel to Guantanamo to attend the May 5 arraignment in order to be heard on the ACLU's Motion.
- 3. Statement of Facts.** On May 2, 2012, the government's Motion to Protect Against Disclosure of National Security Information became publicly available. Docket, *United States vs. Khalid Shaikh Mohammad et al.*, available at <http://www.mc.mil/CASES/MilitaryCommissions.aspx>.

The government's motion confirms what the ACLU anticipated in its own motion: the government has classified and seeks to withhold from the public any and all statements made by defendants' about their detention and treatment in U.S. custody. Gov't Mot. 2, 5–6, 9–11, 13–14. On that basis, the government asks the military judge to order a 40-second delay in the audio feed to the public, press and observers, in part so that a courtroom security official can cut off the audio feed whenever the defendants describe their detention and interrogation in U.S. custody. Gov't Mot. 18–19.

3. Legal Basis for Relief Requested. The ACLU's legal grounds for challenging the government's improper classification and suppression of defendants' personal accounts of their treatment and detention in U.S. custody and the 40-second audio feed delay are set forth in its Motion. The ACLU has a right to be heard on its motion before the Court adjudicates the government's motion for a protective order. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 609 n.25 (1982) (“[R]epresentatives of the press and general public ‘must be given an opportunity to be heard on the question of their exclusion.’”); *see also* ACLU Mot. 6 n.2.

The ACLU understands that the U.S. military has scheduled a flight on Friday, May 4, to bring members of the press to Guantanamo for the May 5 arraignment, and respectfully requests that the military judge issue an order permitting an ACLU lawyer, Hina Shamsi, to take that flight in order to be heard on the ACLU's Motion.

Respectfully submitted,



Hina Shamsi
Nathan Freed Wessler
Zachary Katznelson

American Civil Liberties Union
Foundation
125 Broad St., 18th Fl.
New York, NY 10004
Tel.: (212) 549-2500
Fax: (212) 549-2654
hshamsi@aclu.org