

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MAHMOAD ABDAH, <i>et al.</i> ,)	
)	
<i>Petitioners,</i>)	
)	
v.)	Civil Action No. 04-1254 (HHK)
)	
BARACK H. OBAMA, <i>et al.</i> ,)	
)	
<i>Respondents.</i>)	
)	

**PETITIONERS’ RESPONSE TO RESPONDENTS’ NOTICE OF
EX PARTE, IN CAMERA FILING RE ISN 577**

Counsel for Petitioner Jamal Mar’i (ISN 577) again object to the Government’s filing of a third *ex parte* submission regarding Petitioner. After counsel objected to the Government’s first two *ex parte* filings and noted the Government’s refusal to provide any explanation for them, this Court ordered the Government “to explain why it is appropriate for the submissions in support of [the Government’s] motion to be considered *ex parte*.” (Doc. 679.) The plain import of the Court’s Order was that the Government should provide to Petitioner’s counsel as well as to the Court an explanation sufficient to assess the need for *ex parte, in camera* treatment. By instead continuing to proceed *ex parte* and *in camera*, the Government compounds the problem and further prejudices Petitioner. *See, e.g., Mitchell v. Sirica*, 502 F.2d 375, 381 (D.C. Cir. 1974) (recognizing “that even the ‘possible prejudice’ resulting from evidence received *ex parte*, albeit in the same judicial proceeding, could mandate reversal” when an opposing party has “no opportunity to challenge, rebut, qualify or explain such evidence”) (quoting *Gregg v. United States*, 394 U.S. 489, 491-92 (1969)).

Petitioner renews his request that the Court make the Government's filings available to Petitioner's counsel—either on the public docket or, if warranted, at the secure facility—so that counsel can assess the Government's request and file an appropriate response.

Respectfully submitted,

/s/ Brian E. Foster

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