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

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**UNITED STATES OF AMERICA**

v.

**PAUL ALVIN SLOUGH,  
NICHOLAS ABRAM SLATTEN,  
EVAN SHAWN LIBERTY,  
DUSTIN LAURENT HEARD, and  
DONALD WAYNE BALL,**  
Defendants.

Case No.: 1:08-cr-360-RMU

Hon. Ricardo M. Urbina

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**REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PARTICIPATION AS  
AMICUS CURIAE**

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**REPLY MEMORANDUM IN SUPPORT OF MOTION FOR  
PARTICIPATION AS AMICUS CURIAE**

The Center on the Administration of Criminal Law offers this brief Reply to the Defendants' Opposition to the Center's motion for leave to participate as *amicus curiae* on the issue of jurisdiction.

1. The Defendants assert that the Center is not a friend of the Court but is "an advocate for the Government" with "interest in this case ... informed by [its] prejudgment of the Defendants' guilt." (Defendants' Reply Brief ("Def. Br.") 3.) This assertion is untrue. The Center is an apolitical, nonpartisan organization devoted to promoting good government and prosecution practices in criminal justice matters. The Center's positions in litigation matters, including this case, are determined by an objective and dispassionate evaluation of applicable law, not partisanship. In this case, the Center takes no position on the guilt or innocence of the defendants. Its interest in this case is solely in seeing that the jurisdictional regime enacted by Congress is vindicated, because that statutory scheme ensures that serious crimes do not go *uncharged* because of jurisdictional gaps. In the Center's view, whether the defendants are guilty of the charges they face is a matter for a jury. The Center's position is solely that the United States has jurisdiction under the Military Extraterritorial Jurisdiction Act ("MEJA") to prosecute this case.

2. The Defendants assert that the Center has "parrot[ed]" the Government's brief. (Def. Br. 6.) As an initial matter, we assure the Court that the two briefs were drafted entirely separately and that no drafts were shared between the Government and the Center at any time. Moreover, the briefs were filed on the same day to guarantee that the defendants would have as much time to reply to the Center's brief as the Court had given them to reply to the Government's brief.

3. The central issue on the appropriateness of *amicus* participation is whether the *amicus* can offer significant additional assistance to the Court. There is such assistance in the Center's proffered *amicus* brief, which would not be available if that brief were excluded. The Center will not use this Reply to offer any additional discussion of the merits of the jurisdictional issue. But there are several salient examples of the substantive independence of the Center's brief, including a different approach to the doctrine of lenity (at pages 16-20 of the Center's brief; compare pages 28-30 of the Government's), a significantly fuller and more detailed discussion of the legislative history of the 2004 amendments to MEJA (at pages 8-13 of the Center's brief; compare pages 23-27 of the Government's brief), and a different emphasis and approach to the literal meaning of the statutory text (at pages 6-7 of the Center's brief; compare pages 19-22 of the Government's brief). Indeed, the defendants virtually admit that the Center's contribution is unique by requesting the opportunity to file an additional memorandum if the Court grants *amicus* status to the Center. (*See* Defendants' Merits Brief ("Def. Merits Br.") p.2, n.3.)

4. The Center does not disagree that it is rare for an *amicus* brief to be submitted at this stage of a criminal case, or that it is rare for *amicus* briefs to be submitted in support of the Government. But, as the Center pointed out on page 3 of its Motion for Leave to Participate as *Amicus Curiae*, in every other case in which it has participated as *amicus* it has opposed the government and supported defendants. This is the first and only case in which it has sought to support the Government's position. In this case the Center seeks to offer to the Court the benefit

of the independent view that a body like the Center may have. We believe that the Center's brief will be of assistance to the Court.<sup>1</sup>

Dated: February 5, 2009

Respectfully submitted,

/s/ Daniel Joseph

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<sup>1</sup> In a terrorism prosecution in the United States District Court for the Southern District of New York, *United States v. Sattar, et al.*, 02-395-CR (JGK), two pretrial *amicus* briefs were filed in the District Court. Both briefs were filed in support of the defendants' motion to dismiss the Indictment. *See United States v. Sattar*, 272 F. Supp. 2d 348, 375 n.13 (S.D.N.Y. 2003). On appeal in the same case before the United States Court of Appeals for the Second Circuit, an *amicus* brief was filed in support of the United States. *See United States v. Stewart, et al.*, 06-5015-CR (CTA2) (docket entry dated 11/15/2007). (The Center's Executive Director prosecuted the referenced case.)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2029 Century Park East, Suite 2400, Los Angeles, CA 90067. On February 5, 2009, I served the foregoing document(s) described as: **REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PARTICIPATION AS AMICUS CURIAE** on the interested party(ies) below, using the following means:

SEE ATTACHED SERVICE LIST

BY OVERNIGHT DELIVERY I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 5, 2009 at Los Angeles, California.

Yvonne Shawver

[Print Name of Person Executing Proof]

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[Signature]

## SERVICE LIST

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