

**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 AL HAWSAWI**

**AE 013HHH**

**Government Response**

To Defense Motion to Make Conforming  
Amendments to AE 013DDD, the  
Commission's Second Amended Protective  
Order #1 and Mr. al Baluchi's Notice of  
Joinder, Factual Supplement and Argument

27 January 2014

**1. Timeliness**

This Response is timely filed pursuant to Military Commissions Trial Judiciary Rule of Court 3.7.c(1).

**2. Relief Sought**

The Prosecution respectfully requests that this Commission deny the Defense motion and supplement.

**3. Burden of proof**

As the moving party, the Defense must demonstrate by a preponderance of the evidence that the requested relief is warranted. R.M.C. 905(c)(1)-(2).

**4. Overview**

The Defense filing in AE 013EEE (MAH) seeks two forms of relief. First, the Defense is requesting that this Commission remove any judicial control or oversight over the Accused from personally disclosing classified information that has, or may in the future, be disclosed to any Accused, regardless of the means by which the Accused obtained the classified information. The stated reason for this proposed change is because counsel opposes this Commission preventing the Accused "from exercising rights they have under international law to seek investigations and recourse as victims of torture." AE 013EEE (MAH) at 2. In other words, by requesting a

change to paragraph 8(b) of the Second Amended Protective Order #1, the Defense is seeking tacit support from this Commission for the Accused to disclose classified information to uncleared, foreign individuals. Although such disclosures will be limited based on practical safeguards within JTF-GTMO and prior Commission orders, the statutory rules prohibiting the unauthorized disclosure of classified information govern the actions of all participants in this proceeding, and this Commission need not make a change. The Commission's removal of paragraph 2g(5) as superfluous does not mean the Accused are now free to disclose classified information. An interpretation to the contrary misunderstands the Commission's ruling in AE 013CCC and AE 200II and further undermines the very purpose of the protective order.

Second, the Defense once again "asks this Commission to extend the timeline for signing AE 013BB Amended Memorandum of Understanding (MOU), until the commission can consider making conforming changes to AE 013DDD Second Amended Protective Order #1..." AE 013EEE (MAH) at 1. For more than a year, counsel has responded to this Commission's order to sign the pertinent MOU by pursuing a seemingly endless number of amendments to the protective order, as well as other litigation. Apart from the instant motion, counsel for Mr. Hawsawi most recently filed AE 260 (MAH) asking this Commission to attribute delay to the Prosecution because the Prosecution could not produce classified information to the Defense until the MOU is signed. This is the same MOU that counsel for four of the five Accused refuse to sign. This cycle needs to stop if the Defense is truly serious about receiving classified discovery. The Commission should deny the Defense motion in its entirety and enforce its 24 January 2014 deadline for signing of the MOU. *See* AE 013CCC.

Counsel for Mr. Ali's factual supplement and argument in AE 013EEE (AAA Sup) seeks an amendment to paragraph 8(a)(1) that would fundamentally alter the definition of classified information in a manner that is inconsistent with Executive Branch determinations. The Commission's decision to strike the language in paragraph 2(g)(5)—the "observations and experiences" provision—did nothing more than acknowledge the superfluous nature of that provision with other language contained in the protective order. *See* AE 013CCC at 8; AE 200II

at 8. As such, counsel for Mr. Ali's request that the Military Judge alter the definition of classified information to only that "information obtained by the defendant through the military commissions process" misstates the definition of classified information and again, misunderstands the Commission's ruling in AE 013CCC and AE 200II.

## 5. Facts

On 31 May 2011 and 25 January 2012, pursuant to the Military Commissions Act of 2009 ("M.C.A."), charges in connection with the 11 September 2001 attacks were sworn against Khalid Shaikh Mohammad, Walid Muhammad Salih Bin 'Attash, Ramzi Binalshibh, Ali Abdul Aziz Ali, and Mustafa Ahmed Adam al Hawsawi. These charges were referred jointly to this capital Military Commission on 4 April 2012. The Accused are each charged with Conspiracy, Attacking Civilians, Attacking Civilian Objects, Intentionally Causing Serious Bodily Injury, Murder in Violation of the Law of War, Destruction of Property in Violation of the Law of War, Hijacking an Aircraft, and Terrorism.

On 26 April 2012, the Government filed a Motion To Protect Against Disclosure of National Security Information, and requested the Military Judge to issue a protective order pursuant to Military Commission Rule of Evidence ("M.C.R.E.") 505(e). See AE 013 (App. 1-46).

On 2 May 2012, the American Civil Liberties Union and the American Civil Liberties Union Foundation filed a Motion for Public Access to Proceedings and Records, challenging the Government's proposed protective order. AE 013A. The Defense also filed objections to the proposed order. AE 013E, G.

On 17 October 2012, the Military Judge entertained oral argument on the Government's Motion To Protect Against Disclosure of National Security Information (AE 013) at Guantanamo Bay, Cuba. Trial counsel, counsel for the Accused, the Press, and the ACLU all participated in the proceeding. *United States v. Khalid Shaikh Mohammad et al.*, Unofficial/Unauthenticated Transcript ("Tr.") 670-814. On 6 December 2012, the Military Judge issued a Ruling on

Government Motion To Protect Against Disclosure of National Security Information (AE 013O) and entered Protective Order #1 (AE 013P). In his 6 December 2012 ruling, the Military Judge made certain findings as required by law, *see* AE 013O at 3-5, including that the information classified by the government was, as a matter of law, “properly classified by the executive branch pursuant to Executive Order 13526, as amended, or its predecessor Orders, and [was] subject to protection in connection with this military commission.”

Also in the 6 December 2012 Protective Order, the Military Judge made certain findings; namely, that “this case involves classified national security information . . . the disclosure of which would be detrimental to national security.” The Protective Order established procedures applicable to all persons who have access to, or come into possession of, classified information regardless of the means by which those persons obtained that classified information. *Id.* ¶ 1.a. Specifically, the Protective Order requires that members of the Defense obtain a security clearance prior to accessing classified information; that the Defense is precluded from disclosing classified information without prior authorization; that they provide notice of intent to disclose classified information during any pretrial or trial proceeding in accordance with M.C.R.E. 505(g); and that the Commission could order the closure of proceedings to the public when necessary to protect against the disclosure of classified information. Those procedures “apply to all aspects of pre-trial, trial, and post-trial stages in this case, including any appeals.” *Id.* ¶ 1.a.

On 9 February 2013, after considering certain Defense motions to amend the Protective Order, the Military Judge issued a Supplemental Ruling on the Government’s Motion To Protect Against Disclosure of National Security Information (AE 013Z) and entered Amended Protective Order #1 (AE 013AA). The 9 February 2013 Amended Protective Order modified (1) paragraph 2.k. (defining “[u]nauthorized disclosure of classified information”) and (2) paragraph 8.a.(1) (setting forth notice requirements in military commission proceedings) of the 6 December 2012 Protective Order. *See* Amended Protective Order #1.

After the issuance of Amended Protective Order #1, the Press and the ACLU each filed a petition for a writ of mandamus with the D.C. Circuit Court of Appeals. Counsel for Mr. Ali

also filed a motion for leave to intervene in the press petition. On 27 March 2013, the D.C. Circuit summarily denied both writs and the motion for leave to intervene.

On 13 February 2013, the Military Judge had the following colloquy with Defense counsel regarding the Memorandum of Understanding (MOU):

MJ [COL POHL]: Let me ask you this: Is there some reason preventing you guys from signing the MOU?

LDC [CDR RUIZ]: Part of the reason is we still had ongoing litigation on very specific terms on what that final protective order was going to look like.

MJ [COL POHL]: That's now done.

*United States v. Khalid Shaikh Mohammad et al.*, Unofficial/Unauthenticated Transcript (“Tr.”) 2303. At the conclusion of the February 2013 hearing session, the Military Judge advised Defense counsel that their failure to sign the MOU prevented them from receiving classified discovery:

MJ [COL POHL]: But I will tell defense that if you think you have some legal basis not to follow, sign the MOU or follow the order, raise it to me now rather than later, because, again, you can't get the classified discovery without it, and if you can't get the classified discovery without it, it raises questions of whether or not you can competently represent the accused in this case.

Tr. 2713. By the commencement of the June 2013 hearing session, only one Defense team had signed the MOU. On 21 June 2013, the Military Judge informed Defense counsel that the suspense for signing the MOU was the August hearing:

MJ [COL POHL]: Yes. Okay. Let's put it this way: If you have a legal basis -- and I'm always willing to listen to argument -- of why you don't have to sign the MOU, I'm just speaking to the four who have not signed it, and you have a legal basis for that, you are to file such a motion; otherwise, I expect compliance with the order by the next session or, again, I'm always willing to listen why you are not going to do it. So if there is a suspense on that suspense at the next hearing to be resolved.

Tr. 4136-4137. On 12 August 2013, counsel for Mr. Hawsawi, Mr. Binalshibh, and Mr. Bin Attash filed a Defense Motion to Dismiss Because Amended Protective Order #1 Violates the Convention Against Torture. *See* AE 200 (MAH, RBS, WBA). On the first day of the August session, the Military Judge inquired whether Defense counsel had signed the MOU:

MJ [COL POHL]: I will do this sequentially, and understand if you have a legal reason I will entertain it, but that order was signed in January and basically by failing to sign the MOU you are not raising, to my knowledge, the legal objection to not signing it -- you've basically prevented the government from providing you with the discovery. So my question to each of them is do you have a legal reason of why you don't sign the MOU to get the classified information?

Tr. 4226. Defense counsel informed the Military Judge that their justification for not signing the MOU was based upon the AE 200:

MJ [COL POHL]: Have you filed a motion that the MOU should not be signed for some legal reason?

DC [CDR RUIZ]: Yes, sir. We in filed a convention against torture motion.

MJ [COL POHL]: When did you file that?

DC [CDR RUIZ]: We filed it very recently.

MJ [COL POHL]: Like last week?

DC [CDR RUIZ]: Let me tell you why ---

MJ [COL POHL]: No, let me finish. You filed a motion based on convention against torture signed when, the convention against torture?

DC [CDR RUIZ]: I don't recall the specific date.

MJ [COL POHL]: '98, '99 sound about right?

DC [CDR RUIZ]: Okay.

MJ [COL POHL]: So you have an order signed in January, you wait until August to file a legal objection to the order filed in January based on legal precedence that has been in existence for 14 or 15 years, and I should not treat that as you just ignored the motion or the order?

Tr. 4227-4228. After additional colloquy, counsel for Mr. Hawsawi, Mr. bin Attash, Mr. Binalshibh, and Mr. Mohammad advised the Military Judge that the sole impediments to them signing the MOU were resolution of the outstanding AE 013 series of motions and AE 200. *See* Tr. 4246-4246, 4257-4258, 4260, 4262-4263.

On 17 December 2013, this Commission denied the Defense requested relief in AE 200. *See* AE 200II.

On 17 December 2013, this Commission issued an amendment protective order and ordered the Defense to sign the MOU by 24 January 2014. *See* AE 013CCC; AE 013DDD.

On 23 December 2013, counsel for Mr. Hawsawi filed AE 260 (MAH) that seeks to compel a response to a Defense discovery request that may contain classified information, irrespective of the MOU. On 6 January 2014, the Prosecution filed its response. *See* AE 260A. The Prosecution incorporates by reference the law and argument in AE 260A.

On 6 January 2014, counsel for Mr. Hawsawi filed AE 013EEE (MAH).

On 13 January 2014, counsel for Mr. Ali filed AE 013EEE (AAA Sup).

## **6. Law and Argument**

### **I. Protective Orders Are Issued to Protect Against the Unauthorized Disclosure of Classified Information**

The preamble to the Rules for Military Commissions notes that the procedural and evidentiary rules not only comport with the Military Commissions Act of 2009 (hereinafter “M.C.A.”) and ensure protection of classified information, but they also “extend to the accused all the judicial guarantees which are recognized as indispensable by civilized peoples as required by Common Article 3 of the Geneva Conventions of 1949.” *See also* M.C.R.E. 102 (“These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, the protection of national security, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.”) The Rules for Military Commissions, Military Commission Rules of Evidence, and the M.C.A. also permit protective orders with respect to military commissions. *See, e.g.* M.C.R.E. 505(e); R.M.C.

806(d). However, while the military judge has ample authority as the presiding officer to ensure the fairness of proceedings, no source of law permits a military judge to distinguish among the various parties as to who may or may not be exempt from the prohibition against unauthorized disclosure of classified information.

The law regarding disclosure of classified information is clear. “Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. While vested with authority as the presiding officer to ensure a fair trial, *see* 10 U.S.C. § 948j, a military judge may “[u]nder no circumstances . . . order the release of classified information to any person not authorized to receive such information.” *See* 10 U.S.C. § 949p-1(a); M.C.R.E. 505(a)(1) (stating “[t]his rule applies to all stages of the proceedings”). M.C.R.E. 505(e) provides: “Upon motion of the trial counsel, the military judge shall issue an order to protect against the disclosure of any classified information that has been disclosed by the United States to any *accused or counsel*, regardless of the means by which the accused or counsel obtained the classified information, in any military commission under [the M.C.A.], or that has otherwise been provided to, or obtained by, any such accused in any such military commission.” M.C.R.E. 505(e) (emphasis added); 10 U.S.C. § 949p-3 (same).<sup>1</sup> The Prosecution’s initial motion and accompanying declarations set forth the classified information at issue in this case, the grave damage to national security that unauthorized disclosure of such information would cause, and the narrowly-tailored remedies sought to protect this national security information. *See* AE 013. As such, the Military Judge is authorized to issue a protective order prohibiting all participants, to specifically include the Accused, from disclosing classified information, or any information that tends to reveal classified information, to any person not authorized to access such classified information in connection with this case.

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<sup>1</sup> The requirement of appropriate protective orders is substantially identical to that enforced in federal civilian criminal trials involving classified information. *See* Section 3 of the Classified Information Procedures Act (“CIPA”), 18 U.S.C. App. 6 (“Upon motion of the United States, the court shall issue an order to protect against the disclosure of any classified information disclosed by the United States to any defendant in any criminal case in a district court of the United States.”).

**II. The Proposed Amendment to the Second Amended Protective Order #1 Are Inapposite to the Rules**

Paragraph 8(2)(b) governs the actions of participants in a military commission proceeding by providing that, “*No* participant in any proceeding . . . may disclose classified information, or any information that tends to reveal classified information, to any person not authorized to access such classified information in connection with this case.” (emphasis added). To remove the Accused from this provision would undermine the statute and rules which operate to prohibit the unauthorized disclosure of classified information. To the extent the Defense interprets the Commission’s removal of paragraph 2g(5) to *now* allow the Accused to discuss classified information implicated by paragraphs 2g(4)(a)-(e), the Defense misunderstands the Commission’s rulings in AE 013CCC and AE 200II. The Commission’s use of the word “superfluous” in these rulings is not without import. To say something is “superfluous” implies that it is excessive.

In this case, the removal of the following paragraph: “In addition, the term ‘information’ shall include, without limitations, observations and experiences of an accused with respect to the matters set forth in subparagraphs 2g(4)(a)-(e)” is superfluous because the categories of information contained in subparagraphs (a)-(e) are still considered classified regardless of how that information is or was conveyed to the Accused and counsel. For purposes of prohibiting the unauthorized disclosure of classified information, it makes no difference whether the Accused observed the information, experienced aspects of the information, or learned about it from another source. The Accused are still in possession of the classified information and the Commission possesses the authority and responsibility to prohibit its unauthorized disclosure.

The Defense in AE 013EEE (MAH) fails to acknowledge or address the rule pertaining to protective orders. Instead, counsel makes the unfounded argument that “the Second Amended Protective Order #1 and MOU still operate to require Defense Counsel to silence Mr. Hawsawi...” AE 013EEE (MAH) at 6. In reality, after more than a year of litigation, the plain

language of the protective order reveals its sole purpose in protecting against the release of classified information to any person not authorized to receive such information.

The Defense now argues that the protective order should be amended because it “imposes an affirmative obligation on Defense Counsel to police the accused and prevent them from exercising rights they have under international law to seek investigations and recourse as victims of torture.” AE 013EEE (MAH) at 2. Despite counsel’s focus on this Commission’s “limited power to control the actions of the Accused in this regard,” the Defense provides no authority for completely removing the “Accused” from the auspices of the protective order. The statute and rules still require that the Military Judge shall issue an order to protect against the disclosure of any classified information that has been disclosed by the United States to any accused or counsel, regardless of the means by which the accused or counsel obtained the classified information.

Since April 2012, the Prosecution’s proposed protective order pertaining to classified information has gone through considerable—often word-for-word—review, analysis and dissection through the adversarial process. In the process of molding a final protective order, “superfluous” language was removed by the Commission. *See* AE 013CCC at 8. The Commission also took a pragmatic look into the issues surrounding AE 013 and AE 200. The result of this extensive process is the Commission’s Second Amended Protective Order #1. *See* AE 013DDD. The filing of the most recent motions operates to hinder the Prosecution’s efforts in moving this Commission forward by giving the defense counsel plausible deniability in ignoring the Military Judge’s repeated orders to sign the MOU and further prevent the Prosecution from fulfilling its statutory obligation to provide classified discovery in this case.

**III. Removal of Paragraph 2g(5) Does Not Operate to Change the Classified Nature of the Information Contained in Paragraphs 2g(4)(a)-(e) Regardless of How That Information Is or Was Communicated to the Accused**

For over a year, the Defense has ignored or failed to understand the premise that the Accused have been exposed to classified information by the nature of their detention. The Accused have therefore obtained, through observation and experience, classified information as

defined by the five categories of information contained in paragraph 2g(4). By the very nature of their continued custody, the government retains the means and responsibility to prohibit the disclosure of classified information they have obtained, regardless of the source. The Prosecution makes no argument that the memories, experiences, and observations of the Accused that were created or obtained prior to their detention in CIA custody are classified. Simply stated, the five *categories of information* contained in subparagraphs (a) through (e) are classified, and every participant in the proceeding—to include the Accused—is prohibited from disclosing such information to anyone who is unauthorized to receive it. To limit classified information to only that information obtained by the defendant through the military commissions process completely misunderstands the actual definition of “classified information” and further undermines the statute, rules, and protective order governing the unauthorized disclosure of classified information.

A simple example illustrates the point. An Accused wishes to testify about his detention in Country X. The Accused did not learn this information from his counsel or through the military commission proceeding. Instead, the Accused knows he was detained in Country X because he observed the country in which he was detained. The Accused is called to testify, without notice to the Prosecution or Commission, and affirmatively states that he was detained in Country X. According to counsel for Mr. Ali’s proposal, that would be perfectly acceptable because the defendant did not obtain the name of Country X through the military commissions process, but instead through his own observation of and experiences in Country X. Not only would the Accused be disclosing classified information to persons unauthorized to receive it, but counsel for the Accused would have been complicit in that unauthorized disclosure because he or she is in a position to confirm or deny that information. Just as information believed to be classified must be appropriately marked when adopted in a pleading filed with the Commission because counsel are in a position to confirm or deny that information, counsel must provide notice of the classified information to which the Accused would testify. Whether the Accused observed Country X during his detention or learned about it from counsel makes no difference—

Country X as testified to by the Accused would be a classified fact regardless of the source of that information. *See* AE 013DDD.

The practical effect of the current protective order is simple. If counsel intends to illicit testimony of the Accused that contains classified information (which includes information contained in paragraph 2g(4)(a)-(e) of the protective order), they must provide notice consistent with the statute, rules, and protective order. The parties have fully briefed the argument for and against the constitutionality of the notice provision; the Commission heard oral argument on the motion in the January 2013 session; and the Commission upheld the notice provision as a necessary protection in its February 2013 ruling. *See* AE 013U; AE 013U-1; and AE 013Z. Nothing, to include the removal of the “superfluous” language in paragraph 2g(5), has changed the effect of the notice provision as upheld in AE013Z.<sup>2</sup>

If the Commission is inclined to accept the arguments of defense counsel, the Prosecution would not oppose the following change to paragraph 8a(1)(a): “The parties must comply with all notice requirements under M.C.R.E. 505 prior to disclosing or introducing any classified information in this case, including classified information introduced through the testimony of a defendant.” The Prosecution objects to the second sentence proposed by counsel for Mr. Ali: “The testimony of a defendant is not classified unless it references classified information obtained by the defendant through the military commissions process,” as well as deletion of subparagraph (b). The proposed change and deletion are incorrect and further misinterpret the fact that the Accused have obtained classified information by virtue of their detention in CIA custody. As such, the information contained in paragraph 2g(4)(a)-(e) remains classified, regardless of how the Accused obtained it. The Commission’s ruling in AE 200II is clear:

The order itself and this Commission are not OCAs. Other Federal executive branch agencies made the determination [that] [sic] the

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<sup>2</sup> Where the Defense fails to cite a change in the facts or law, the Defense’s current argument for reconsideration of the Commission’s ruling in AE 013Z should be denied. If the Commission is inclined to consider this argument anew, the Prosecution adopts the arguments advanced in its original AE 013U-1 filing and during the 28 January 2013 oral argument.

information described by these paragraphs [2g(3)-(5)] must be protected in order to prevent harm to the security of the United States. The Military Judge, like any other judge, lacks authority to abridge the powers of the Executive branch to properly safeguard information relating to our national security. Neither can the Military Judge allow anything other than the proper safeguarding of information relating to our national security in the conduct of the proceedings. The Commission is thus without authority to declassify information presumed to be properly classified.”

*See* AE 200II, paragraph 8.

#### **IV. Production of Classified Discovery Hinges Upon Counsel Signing the MOU Not Later Than 24 January 2014 as Ordered by This Commission**

The Prosecution has already provided from 239,000 to 242,000 pages of mostly unclassified discovery to the five defense teams in this case.<sup>3</sup> Specifically, the Prosecution has already disclosed, among other categories, information regarding the crime scenes located at the World Trade Center, Pentagon, and the United Airlines Flight #93 crash site in Somerset County, Pennsylvania; movements of the individuals who hijacked American Airlines Flight #11, United Airlines Flight #175, American Airlines Flight #77, and United Airlines Flight #93, to include material linking the hijackers to the Accused; banking transactions of the hijackers, to include materials linking the hijackers to the Accused; evidence seized at various sites where several of the Accused were captured; materials considered by the Convening Authority in making his referral decision; medical records of the Accused, to include material disclosing the conditions of confinement at Guantanamo Bay; statements of the Accused to law enforcement; and victim information.

The Prosecution also is prepared to produce classified discovery, including computer media that is the subject of various Defense requests for discovery, within 24 hours of counsel executing the MOU. Consistent with previous tactical requests, the Defense once again “asks that this Commission extend the timeline for signing the MOU until the Commission considers

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<sup>3</sup> The difference in the number of documents provided to the various defense teams is primarily due to medical records and detention disciplinary records being disclosed only to the Accused to which they pertain, and the fact that only one defense team has signed the MOU for receipt of classified information.

this Motion requesting conforming amendments.” AE 013EEE (MAH) at 6. This Commission should not sanction further delay in the classified discovery process. Such a delay serves no productive purpose. Since April 2012, this Commission has heard arguments pertaining to the protective order. The result is AE 013DDD. The Accused will not be harmed or otherwise prejudiced by counsel signing the MOU—a routine practice in federal court cases involving classified information. Not later than 24 January 2014, it is time for the classified discovery process to begin.

## **7. Conclusion**

The Second Amended Protective Order #1 conforms to all applicable rules and statutes and appropriately regulates the use and safeguarding of classified information in this military commission. The proposed amendments to paragraph 8 misinterpret the Commission’s rulings in AE 013CCC and AE 200II and therefore, should be denied.

Furthermore, in AE 013CCC, the Commission ordered the following with respect to counsel for Mr. Mohammad, Mr. bin ‘Attash, Mr. Binalshibh, and Mr. Hawsawi: “Executed MOUs are required to be provided to the Chief Security Officer and the Court Security Officer not later than 24 January 2014.” Despite the last-minute flurry of litigation initiated by the Defense on the eve of this deadline, the Defense has not met its burden in justifying an extension of time to execute the MOU beyond the deadline. Such an extension will only serve to further delay the classified discovery process.

## **8. Oral Argument**

The Prosecution waives oral argument, but to the extent the Commission grants the Defense request for oral argument, the Prosecution requests the opportunity to be heard.

## **9. Witnesses and Evidence**

None.

## **10. Additional Information**

None.

**11. Attachments**

A. Certificate of Service, dated 27 January 2014.

Respectfully submitted,

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# ATTACHMENT A

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Appellate Exhibit 013HHH (KSM et al.)  
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