

MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY

UNITED STATES OF
AMERICA

v.

KHALID SHAYKH MOHAMMAD,
WALID MUHAMMAD SALIH
MUBARAK BIN 'ATTASH,
RAMZI BIN AL SHIBH,
ALI ABDUL AZIZ ALI,
MUSTAFA AHMED ADAM
AL HAWSAWI

AE 031(MAH 9th Sup)

**Mr. Hawsawi's Supplement to AE-031,
Defense Motion to Dismiss
for Unlawful Influence**

Filed: 1 April 2014

- 1. Timeliness:** This Supplement is timely filed by leave of the Commission.
- 2. Relief Sought:** Mr. Hawsawi is filing this supplement to AE 031, Defense Motion to Dismiss for Unlawful Influence.
- 3. Explanation per Rule 5, Paragraph (e) of the Rules of Court:** Mr. Hawsawi filed AE-031, Defense Motion to Dismiss due to Unlawful Influence, on May 11, 2012. As explained further below, on March 11, 2014, Attorney General Holder made a statement that impacts the Defense Motion to Dismiss. On the Gregorian calendar, March 11, 2014 comes after May 11, 2012. Accordingly, because the Attorney General made the subject statement after the Defense filed AE-031 Motion to Dismiss, it is a new fact that could not have been available to the Defense at the time it filed the initial Motion to Dismiss.
- 4. Supplemental Fact:** On March 11, 2014, National Public Radio's *Morning Edition* broadcast an interview with United States Attorney General Eric Holder. In this interview, he commented on this military commission case, saying: "If that case had been brought in an Article III court, it would be over by now, and as I've said previously, Khalid Sheik Mohammed and his confederates would be on death row." Mr. Holder has made similar comments in that past that have been the subject of defense supplements to the record. *See* AE-031(MAH 8th Supp.).
- 5. Conference with Opposing Counsel:** The Prosecution has no objections to the filing of this supplement, but does oppose the relief sought in the motion to dismiss.

6. Attachments:

A. Certificate of Service

B. Johnson, C. (2014, March 11). Holder Speaks Out on Snowden, Drone Policy, Softening Sentences [Radio interview]. In *Morning Edition*, Washington, D.C: National Public Radio.

//s//

WALTER B. RUIZ

Defense Counsel

Detailed Learned Counsel for Mr. Hawsawi

//s//

LtCol Sean Gleason

Detailed Military Counsel

for Mr. al Hawsawi

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CERTIFICATE OF SERVICE

I certify that on the 1st day of April 2014, I caused **AE 031(MAH 9th Sup) Mr. Hawsawi's Supplement to AE 031, Defense Motion to Dismiss for Unlawful Influence** to be electronically filed with the Clerk of the Court and caused the same to be served on all counsel of record by e-mail.

//s//

WALTER B. RUIZ
Learned Defense Counsel

B



< Holder Speaks Out On Snowden, Drone Policy, Softening Sentences

March 11 2014 3:27 AM

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DAVID GREENE, HOST:

Virtually anytime something big happens that touches Washington, it touches the Justice Department. Just a few recent examples include the disappearance of a Malaysian Airliner under mysterious circumstances, the rise in the use of drones, and the perceived threats to the voting rights of millions of people. Any U.S. attorney general has an enormous profile and the stresses to match it. Just ask the current attorney general, Eric Holder. An elevated heart rate sent him to the hospital last month, but Holder says he is on the mend.

He sat down with NPR's Carrie Johnson this week.

CARRIE JOHNSON, BYLINE: Five years into his tenure, the attorney general says he's determined to use the bully pulpit it gives him to talk about things that matter, like an overhaul of the federal justice system. Later this week, he'll testify to the U.S. Sentencing Commission about proposals to reduce prison terms for thousands of people in drug cases. It could save a lot of money to trim sentences by an average of 11 months and Holder says it won't endanger the public.

ERIC HOLDER: For too long we have labored under the misapprehension that we have to have these extraordinarily long sentences if we want to keep the American people safe.

JOHNSON: Eric Holder says the whole system needs to be more flexible.

HOLDER: Putting in the hands of judges what should happen to a particular defendant as opposed to going to a sheet of paper, a computer and spitting out some kind of almost mechanical determination of what should happen.

JOHNSON: Holder's one of few attorneys general to serve well into a second term and he says he has no immediate plans or timetable to leave, at least not while cases to protect the rights of minority voters in Texas and North Carolina are just starting to move through the courts. Those efforts suffered a setback last week when seven Democrats voted to block the man President Obama nominated as Holder's deputy on civil rights.

Lawmakers cited Debo Adegbile's time as an attorney for a convicted cop killer as a reason to deny him a job at the Justice Department.

HOLDER: The political decision not to pay close attention to what his record was or to be misinformed about what his record was and then to use that as a basis to deny him the opportunity to serve here as an assistant attorney general is something that to me is extremely disturbing.

JOHNSON: Holder says that vote set a dangerous precedent that could scare lawyers away from representing unpopular clients because of the consequences on their own careers. And speaking of consequences, Holder says he's still open to talking with NSA leaker Edward Snowden about terms of surrender on Espionage Act charges.

Holder promises Snowden will be treated fairly if he decides to leave asylum in Russia and return to face justice. But so far, no deal, not even any conversations. Any sense that he's heading back here any time soon?

HOLDER: I don't have any indication of that.

JOHNSON: There's been plenty of conversation about the disappearance of a Malaysian airliner last weekend, the cause of which remains a mystery. Holder says he's offered to help foreign allies, but it's too early to say whether terrorism played any role. The attorney general did note at least two passengers on the missing flight boarded with stolen documents, adding that more attention should be paid to an existing international database of suspicious passports.

HOLDER: Interpol does a really good job in keeping track of passports that are reported stolen. It's a database that is accessible and it would be my hope that airlines and other appropriate entities would make use of that tool.

JOHNSON: As for some of the other national security controversies of his long and bumpy tenure, Holder says he's convinced he's right about the wisdom of trying terrorists in ordinary federal courts. After all, the military case against 9-11 plotter Khalid Sheikh Mohammed is still limping along with no trial in sight.

HOLDER: If that case had been brought in an Article III court, it would be over by now, and as I've said previously, Khalid Sheikh Mohammed and his confederates would be on death row.

JOHNSON: And he says he's generally comfortable with rules President Obama has set out for killing of Americans overseas with armed drones. Holder says the U.S. national security team properly does an after-action analysis to examine whether any civilians died and to minimize the possibility of those deaths in the future. Carrie Johnson, NPR News, Washington.

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