

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 112T (GOV)

**Government Response**

To Mr. Ali's Motion for *In Camera* Review  
of Un-Redacted Versions of  
AE 112K, L, and M

20 May 2016

**1. Timeliness**

The Prosecution timely files this Response pursuant to Military Commissions Trial Judiciary Rule of Court ("R.C") 3.7.

**2. Relief Sought**

The Prosecution respectfully requests that this Commission deny AE 112R (AAA), Mr. Ali's Motion For *In Camera* Review of Un-Redacted Versions of AE 112K, L, and M.

**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. Facts**

On 26 February 2016, during an open-session of this Military Commission, the Prosecution stated the following:

CP [BG MARTINS]: Your Honor, this is just a brief notice in connection with the military commission's expectation of reviewing government discovery under the rubric of 397 and the underlying motions. I want to notify the commission that the prosecution has coordinated as necessary to provide the military judge the unredacted OLC memos. These are the memos Mr. Connell is seeking. We will do that in conjunction with requests for substitutions under M.C.R.E. 505(f), and this will be as to categories C and E of the ten-category construct as well as other categories within that construct.

MJ [COL POHL]: Just so I am clear, we are talking about, I believe, 112K, L, and M, and I don't have them sitting in front of me, and so you are going to give me totally unredacted - - -

CP [BG MARTINS]: You will see the unredacted ones as part of our submissions with regard to the ten-category construct, the appropriate ones. They will be among the original documents containing information we will be seeking a substituted form for.

MJ [COL POHL]: When can I expect to have those?

CP [BG MARTINS]: We are going to be laboring to try to do the first of those as early as the 22nd of March, but it will be before 30 September.

Unofficial/Unauthenticated Transcript ("Tr.") at 11630-11631.

On 5 April 2016, the Commission issued AE 397F, Trial Conduct order, Government Proposed Consolidation of Motions to Compel Information Relating to the CIA's Former Rendition, Detention, and Interrogation Program. In its Order, the Commission explicitly adopted the "Nashiri" ten-category construct proposed by the Prosecution for discovery of information relating to the CIA's former Rendition, Detention, and Interrogation (RDI) program. *See* AE 397F. In adopting this systemic construct, the Commission stated that the "10 categories of discovery, coupled with the unclassified discovery being provided by the Government and previous orders to provide classified discovery, satisfy the basic discovery obligations of the United States relating to information from the CIA's former RDI program." *Id.* at 3. Further, the Commission provided that it "will entertain motions for further discovery *after the Defense has received, and had an opportunity to assimilate, what has been or is being provided at this time.*" *Id.* at 3 (emphasis added).

On 6 May 2016, Defense counsel for Mr. Ali filed the instant motion requesting "that the military commission issue an order compelling the government to file un-redacted versions of AE 112K, AE 112L, and AE 112M for *in camera* judicial review." AE 112R (AAA) at 1. Stating that it filed the motion "to require [the Prosecution] to honor its commitment," *id.* at 8, the Defense argues that the "military commission should require the government to produce the

unredacted memoranda, as the government claimed it would, to test the veracity” of the Prosecution’s redactions. *Id.* at 9-10.

## **5. Law and Argument**

The Commission should deny the instant Motion for *In Camera* Review as there is no justiciable issue ripe for this Commission’s disposition. As stated by the Prosecution on 26 February 2016, the Prosecution will be providing unredacted copies of AE 112K, AE 112L, and AE 112M to the Commission in accordance with its obligations under AE 397F and pursuant to M.C.R.E. 505. While such submission has not occurred as expeditiously as the Defense desires, the Prosecution continues to conduct its due diligence reviewing the documents in question and will be submitting them to the Commission in due course. To be clear, the Prosecution does not oppose providing the unredacted copies of AE 112K, AE 112L, and AE 112M to the Commission for an *in camera* review; it does, however, oppose motions requesting relief that are premature in nature or where the Prosecution has previously agreed to take the particular action requested. *See* AE 403A (GOV) (Government Response to Defense Motion to Compel Discovery of CIA Oral History Program Interviews); AE 409A (GOV) (Government Response to Defense Motion to Compel Discovery Documents Captured During the Raid in Which Osama bin Laden Was Killed). As such and where the Prosecution is on record agreeing to an *in camera* review pursuant to M.C.R.E 505, the Prosecution respectfully requests the Commission deny the instant Motion for *In Camera* Review.

## **6. Oral Argument**

The Prosecution does not request oral argument. Further, the Prosecution strongly posits that this Commission should dispense with oral argument as there is no justiciable issue before the Commission and argument would not add to the decisional process. However, if the Military Commission decides to grant oral argument to the Defense, the Prosecution requests an opportunity to respond.



# ATTACHMENT A

