

**MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY, CUBA**

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**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 133A**

**Government's Response**

To Emergency Defense Motion to Remove  
Sustained Barrier to Attorney-Client  
Communication and Prohibit Any  
Electronic Monitoring and Recording of  
Attorney-Client Communication in any  
Location, including Commission  
Proceedings, Holding Cells, and Meeting  
Facilities and to Abate Proceedings

7 February 2013

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**1. Timeliness**

This brief is timely filed and is submitted in response to all Defense filings pertaining to AE133 pursuant to the Military Judge's schedule for this motion as set forth on the record to ensure briefing is complete for argument on 11 February 2013.

**2. Relief Sought**

The Prosecution respectfully requests that the Commission deny the Defense motion.

**3. Overview**

No entity of the United States Government is listening, monitoring or recording communications between the five Accused and their counsel at any location. The Prosecution respectfully requests that the Commission find that the Accused have failed to meet their burden of proof and persuasion as to this wholly unsupported claim. The audio and visual equipment used in the Courtroom 2 and the Expeditionary Legal Complex (ELC) holding cells all serve

valid and important purposes such as accurately recording these proceedings and ensuring the safety of all personnel involved with these proceedings. The audio capability of the rooms in Echo II, which are used for other purposes other than just attorney-client meetings, is never utilized during attorney-client visits, and although there may have been a capability to hear audio on this particular equipment, security personnel have never activated the audio feature during defense visits. This equipment also lacks the capability to permanently record video or audio. The Prosecution states unequivocally that the evidence presented in regard to AE133 and as a matter of fact, that Counsel's privileged communications with the Accused are not being listened to, monitored or recorded by the United States Government. Accordingly, the Prosecution respectfully requests that the Military Judge deny the Defense motion to abate these proceedings.

The Defense has also requested that this motion be considered by the Military Commission on an emergency basis and Defense asks that this matter be considered at the outset of the next Military Commission hearing scheduled in this case on 11 February 2013. The Prosecution agrees that this Defense motion should be the first priority of this Military Commission and joins in the Defense request that this matter be considered and resolved by this Military Commission during the 11 February 2013 commission session so as not to cause any additional delay to the other matters that have been pending before this Commission since as early as April 2012.<sup>1</sup>

#### **4. Burden of Proof**

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<sup>1</sup> This Prosecution brief is submitted in response to all Defense filing pertaining to AE133, to include all Defense discovery request or motions seeking the production of information, materials or witness in support of the Defense filing identified as AE133.

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). The Defense has failed to offer any credible evidence to meet its burden of proof and persuasion in this motion or to establish when the burden has shifted or should shift to the Prosecution. Should the Commission, in an abundance of caution and in the interest of reassuring all parties involved, deem that witness testimony should be taken to further record any of the facts referenced herein, the Prosecution is prepared to offer such witness testimony. All personnel identified in the declarations attached to this response brief are available to be interviewed by Defense prior to the next military commission session in this case.

## **5. Facts**

On 28 January 2013 the audio and visual transmission feed of the proceedings in *United States v. Mohammad, et al.* in Courtroom 2 was briefly interrupted. *See* unauthenticated transcript in *United States v. Mohammad, et al.*, dated 28 January 2013, RT 1445-1446. On 29 January 2013, the military judge ruled that no original classification authority (OCA) was authorized to interrupt the audio and video transmission feed from Courtroom 2. At that time, the military judge also directed that any technical capability which enabled an OCA to interrupt the audio and video feed be disconnected. *See* unauthenticated transcript in *United States v. Mohammad, et al.*, dated 29 January 2013, RT 1721-1722.

On 31 January 2013, the Defense filed AE 133 requesting that this Military Commission issue an order that each accused be permitted to “communicate and consult in private with their respective counsel...” and prohibit the Government “from electronically monitoring and/or recording any of the Accused’s communications with defense personnel at any time, to include

during legal visits and Commission proceedings, and to abate Commission proceedings until such time as this matter is properly resolved.” AE 133, p. 1.

Upon information and belief, the Prosecution submits certain additional relevant facts for review by the Military Commission. Specifically, the Prosecution attaches sworn declarations from persons with personal knowledge of the following relevant facts:

**I. Technical Capabilities of Courtroom 2**

Military Commission Courtroom Number 2 is equipped with both audio and video equipment. The audio system for Courtroom 2 is a publicly available commercial software product called “For The Record Gold” (FTR Gold). FTR Gold is the standard audio system used by court reporters to transcribe court proceedings. FTR Gold is used to prepare records of trial in courts-martial and in most courts throughout the United States. *See* Declaration of <sup>3</sup> [REDACTED]

<sup>3</sup> [REDACTED] Chief Court Reporter, Office of Court Administration, Office of Military Commissions.

There are a total of twenty-three (23) microphones located on the various tables throughout the courtroom, to include the podium, at counsel tables, and in the panel members’ box. There are also five (5) microphones suspended above the panel box, as well as a microphone located on the Judge’s Bench. There are eight (8) channels into which the audio from these microphones is recorded by the FTR Gold software system. One (1) channel is for the Prosecution microphones; one (1) channel fed by two different banks of microphones (“A” and “B”) for the Defense; one channel (1) for the interpreters; one (1) channel is for the podium; one (1) channel is for the accuseds’ microphones; one (1) channel is for the military judge’s microphone, one (1) channel is for the panel members’ microphones, and the final (1) channel is for the microphone located on the witness stand. *See* Declaration of <sup>3</sup> [REDACTED] Closed Circuit TV and Courtroom Technical Program Manager, Office of Military Commissions.



The FTR Gold recording system is for use by the court reporters in preparing an official transcript of the military commission proceedings. The audio feeds of the 8 channels are stored on a hard drive in the court reporter's computer in Courtroom 2. There is also a backup recording made on a hard drive in the audio visual (AV) office located in Courtroom 2. All recordings of courtroom proceedings are eventually downloaded to a disc which is logged by the OMC SSO and provided to the court reporters. The hard drives are removed at the end of each day and maintained in a safe. *See* Declaration of <sup>3</sup> [REDACTED]; Declaration of <sup>3</sup> [REDACTED]

<sup>3</sup> [REDACTED]

When the audio system in Courtroom 2 is active, the microphone base is illuminated with a green light. When a microphone is active, audio proceedings in the vicinity of that particular microphone will be recorded on the corresponding channel in FTR Gold. When the mute button is depressed, the green light no longer illuminates on the microphone base and that particular microphone is no longer able to record audio proceedings, nor does it transmit outside the courtroom. All trial participants were briefed on the procedures and capabilities of the audio system for Courtroom 2 by <sup>3</sup> [REDACTED] in May 2012 prior to the arraignment. There are also written instructions concerning the capabilities of courtroom microphones posted on the entry door to Courtroom 2 and on counsel tables. *See* Declaration of <sup>3</sup> [REDACTED].

## **II. Transmission of Commission Proceedings**

The video equipment located in Courtroom 2 is used to transmit closed circuit audio and video feeds of the proceedings to locations at Guantanamo Bay Naval Station, Cuba (GTMO) and remote viewing locations in the United States. These closed circuit audio and video transmission feeds (CCTV) are transmitted to Fort Devens in Massachusetts, Fort Hamilton in New York, Joint Base McGuire-Dix-Lakehurst in New Jersey and Fort Meade in Maryland, so

that victim family members, first responders, the media, and members of the public may watch the proceedings. The CCTV feeds to these locations are viewed on a 40 second delay, in accordance with the rules governing these Military Commission proceedings, as ordered by the Military Judge. *See* Declaration of <sup>3</sup> [REDACTED] The same audio feed is also monitored by the court interpreters and by an Original Classification Authority in real-time to conduct classification determinations. Other locations which receive CCTV of the proceedings include the ELC Media Center, Building AV-29, Building AV-34, and JTF-GTMO, and spaces in the ELC assigned to the OMC-CA, OCP, OMCD, the OMC Special Security Officer (“SSO”), the court-interpreters, and the Data Trailer. *See* Declaration of <sup>3</sup> [REDACTED]

Courtroom 2 is a Sensitive Compartmentalized Information Facility (SCIF). Due to the potential for unauthorized disclosure of classified information in this case, the courtroom security officer, the military judge, the court reporter, and personnel in the control room in the have the ability to disable the audio-video feed that is transmitted outside of the courtroom. Access to the courtroom is controlled at all times. The outer doors are secure via a combination lock. Once the combination lock has been opened, access to the facility is limited to those individuals who possess a badge specifically programmed for entrance into the courtroom. Courtroom security personnel regularly perform visual inspections of the facility to ensure unauthorized cameras, microphones or listening devices are not present. Additionally, prior to commission hearing sessions, installation security personnel perform standard security sweeps of the courtroom complex. *See* Declaration of <sup>3</sup> [REDACTED]

### **III. Video Monitoring of ELC Holding Cells**

Prior to and immediately following any courtroom proceeding in this case, the Defense may meet with their clients in a holding cell in the ELC complex located adjacent to Courtroom 2. There are no audio devices located in these holding cells and verbal communications in these cells cannot be monitored or recorded. There is a security camera located in each holding cell which are for the specific purpose of ensuring the safety and security of all personnel present. These security cameras do not have the capability of transmitting or recording audio. *See* Declaration of <sup>3</sup> [REDACTED]

### **IV. Attorney-Client Visits at Echo II**

Attorney client meetings outside the ELC complex are facilitated by the Joint Detention Group (JDG), Joint Task Force Guantanamo Bay (JTF-GTMO). The JDG is responsible for the safety and security of the detainees, guards and visitors to the detention facility. Guard force personnel in the JDG are responsible for transporting detainees to the meeting rooms, escorting the attorneys to the meetings rooms, and visually monitoring meetings. JDG are instructed that they are not permitted to audio monitor privileged conversations and may only visually monitor meetings to ensure the safety of all participants.

Meetings between detainees and their attorneys occur in a facility called Echo II. The facility has individual meetings rooms which are also used for non-legal meetings involving detainees, including meetings with law enforcement personnel, medical personnel, or members of the International Committee of the Red Cross (ICRC). Each of the meeting rooms are equipped with video cameras to facilitate remote video monitoring for security purposes. This video camera capability enables JDG personnel to respond instantly in the event a detainee attempts to escape or threatens violence during a meeting.

While there has been a capability for audio transmissions from these rooms, that capability was not utilized when the rooms were being used for attorney-client meetings or for meetings with the ICRC. There is no capability to record any audio or video from these rooms. Attorney client communications are not monitored or recorded. There is no audio-recording equipment in these meeting rooms and JDG personnel are specifically trained not to record or listen to conversations between detainees and their attorneys. *See* Declaration of Colonel John Bogdan. Upon information and belief, on 1 February 2013, COL Bogdan ordered all audio capability disabled in meetings rooms used for attorney client meetings.

#### **V. Defense Access to Witnesses and Discovery**

Upon information and belief, Counsel for the Accused interviewed and were provided demonstrations of the court reporting and microphone capabilities within Courtroom 2 by members of the Office of Court Administration staff and from the courtroom technology staff. In addition, the Prosecution has provided discovery and made the JDG Commander, Colonel John Bogdan and <sup>3</sup> [REDACTED] available for Counsel for the Accused to interview regarding security monitoring at Echo II and audio-visual capabilities within the ELC and holding cells.

#### **5. Discussion**

No entity of the United States Government is listening, monitoring or recording communications between the five Accused and their counsel at any location. The Accused, without evidence, say otherwise in AE133. In their Motion, the Accused ask for protection that is unnecessary and that they already enjoy from a claimed violation that does not exist based on “circumstantial evidence” that is relevant to nothing, proves nothing and amounts to absolutely nothing.

Counsel for the Accused concede that they bear the burden of proof and persuasion in AE133. They then collapse under that burden by proffering various isolated items, most notably, the following:

1. Sometime prior to 3 July, 2008, the five Accused may have been videotaped while speaking to representatives of an outside organization who were not their legal counsel.
2. Counsel has seen equipment that could monitor and/or record audible and/or visual events at locations where legal visits occur.
3. On some date, although not specified, a detainee, although not one of the Accused, was interviewed, although apparently not by counsel, during which representatives of a foreign government, although not the United States, may have been monitoring the conversation.
4. In July, 2012, a guard took food from the Accused, Mr. Mohammad and returned it to counsel informing counsel that it was an excessive amount but since the guard informed counsel without prompting, it must have been because the guard was monitoring the conversation.
5. The Courtroom has signs warning counsel and the Accused *against* having their conversations inadvertently picked up by microphones located in the Courtroom.
6. Proceedings in the Courtroom are broadcast outside the Courtroom as ordered by the Military Judge.
7. The Court Security Officer liaises with and receives assistance from OCAs in monitoring compliance with trial judiciary information security policies and procedures.<sup>2</sup>

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<sup>2</sup> See Military Commission Trial Judiciary Rules of Court, Rule 10: Court Security Officer (8 Dec 2011) (directing that the Court Security Officer “serve[s] as primary security liaison between the trial judiciary . . . and intelligence entities on all security matters” while also observing the prohibition on ex parte communications except as authorized by the Military Commissions Act or the Manual for Military Commissions). See also Executive Order

Based upon these and other facts of even less relevance, Counsel for the Accused announce that their privileged communications with the Accused are, in fact, being monitored and possibly recorded by unidentified representatives of some unidentified faction of the Government. The Prosecution submits respectfully to this Commission that the Accused have failed to meet their burden of proof and persuasion as to this incendiary claim. The audio-visual equipment in Courtroom 2 serves the valid and important purpose of accurately recording the commission proceeding as required by the Rules for Military Commission and provides an opportunity to transmit the proceedings via CCTV to remote viewing locations for members of the public, the media, and victim family members. The video equipment in the ELC holding cells and the Joint Detention facility meeting rooms serve the equally valid and important purpose of ensuring the safety of all personnel involved with these proceedings. None of the audio-visual equipment in Courtroom 2, the holding cells, or the Joint Detention facility are used to monitor attorney-client communications. The Government states unequivocally that the evidence presented in regard to AE133 and as a matter of fact, that Counsel's privileged communications with the Accused are not being listened to, monitored or recorded by the United States Government.

**I. The Defense Has Improperly Shifted the Burden of Proof to the Prosecution to Prove a Negative—that the United States Government is Not Monitoring Privileged Attorney Client Communications**

Rule 3.8 of the Military Commissions Trial Judiciary Rules of Court provides that, as a general rule, the burden of proof and the burden of persuasion are on the moving party. *See* Military Commissions Trial Judiciary Rules of Court, Rule 3.8. Rule 3.8 also states that in any motion in which the moving party does not believe the general rule should apply that party must provide in their filing a statement of the burden of proof for a particular motion, a statement of

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13,536, Classified National Security Information (Dec. 29, 2009) (describing the process by which the President delegates original classification authority to responsible and accountable officials in the executive branch who are trained in proper classification and declassification). *See generally infra* Part III of this Response Brief.

the burden of persuasion in that particular motion, the point, if any, at which time either the burden of proof or the burden of persuasion is shifted to the nonmoving party, and the legal argument in support of the statement. *See* Rule 3.8, p.3-5.

In their motion, the Defense ignores the requirements of Rule 3.8 and improperly seeks to shift the burden of proof and the burden of persuasion to the Prosecution. The applicable section of the Defense brief simply contends that the Military Commissions Act of 2009, the U.S. Constitution, and Common Article 3 of the 1949 Geneva Convention entitle them to shift the burden of proof and persuasion to the Prosecution. *See* AE 133, p. 2. This type of summary list without any statement of the particular burden required, or legal argument, is wholly insufficient under the rules for motions practice in military commission proceedings.

The Defense motion includes factual allegations regarding circumstances that occurred at times and in locations that are irrelevant to the current issue. The motion cites facts that are completely unrelated to the current case to support an inference that attorney-client communications are compromised. Despite these unsubstantiated claims that are contrary to the fundamental sanctity of privileged attorney-client communications to which the Prosecution is bound by ethical obligation, *see, e.g.*, Model Rule of Professional Conduct 3.4, it has conducted detailed due diligence to provide proffers and witnesses to explain the courtroom and court-reporting technology so that the Defense can be satisfied that their conversations are not being monitored. The Military Commission should reject any further requirement that the Prosecution prove a negative in this case.



**II. Courtroom 2 is Equipped with Industry Standard Digital Court Recording Equipment Used to Prepare the Record of Trial in Courts-Martial, Federal and State Courts Throughout the United States.**

The Military Commissions Act of 2009 (M.C.A.) requires that each commission “shall keep a separate, verbatim, record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge.” 10 U.S.C. § 949o(a). In fact, the only recordings permitted to be made in the courtroom are for the purpose of preparing the record of trial. *See* R.M.C. 806(c). In general, the convening authority shall prepare and maintain a complete record of trial in each commission. *See* R.M.C. 1103(a). Trial counsel is tasked with the responsibility of examining the record of trial before authentication. *See* R.M.C. 1103(e). When any part of the military commission is recorded, a written transcript is required and shall be prepared before the record of trial is forwarded. *See* R.T.M.C. 22-3.

The audio and video equipment in Courtroom 2 of the ELC is necessary to transmit the Military Commission proceedings to the public. The audio equipment and the FTR Gold software program they feed into are also necessary for ensuring that an accurate record of these proceedings can be made. The FTR system is used throughout the United States in courts-martial and in Federal and state courts.

Courtroom 2 is a large courtroom with at least 9 counsel tables. During the proceedings, numerous counsel respond to the Military Judge by using the microphones at their counsel table. The Accused also responded to questions from the Military Judge by speaking into the microphones. The proceedings in this case also involve linguists who translate the official record into the Accuseds’ native language. The numerous microphones found in Courtroom 2 are designed to ensure that the linguists can translate for the Accused and that the official record of the proceeding is accurately recorded so that the court reporters can produce an accurate

transcript. The microphones are not however, used to eavesdrop on sidebar conversations that may occur at counsel table between attorneys and the accused or between co-counsel. As in any courtroom, there are signs warning the parties to assume that the microphones are live at all times and to mute the microphones should they have a sidebar conversation that they do not want to be overheard. As described in the attached declaration of the Chief Court Reporter and the Courtroom Technical Program Manager, the audio feed that is captured by the microphones is segregated by channels so that only audio from the defense tables feeds into the defense channel. Further, all audio captured by the FTR Gold system is maintained by the court reporters to prepare the official record of trial. Neither the Prosecution nor any other U.S. Government agency has access to the hard drives that contain the audio recordings of the proceedings.

Defense concerns regarding the use of the microphones currently in place in the courtroom can be easily alleviated. For example, in order to prevent the recording of confidential conversations on the FTR Gold system, Defense counsel need only properly employ the use of the mute button for any nearby microphones. Even if Defense conversations are loud enough to be picked up on a microphone that is not muted, it does not necessarily follow that the attorney-client privilege has been violated. The Prosecution does not control FTR Gold recordings and the Government has not sought to monitor or record any attorney-client privileged communications in this case. Accordingly, any Defense requests to block the use of video cameras or limit the recording capabilities of the FTR Gold system should be denied.

### **III. The Proceedings from Courtroom 2 are Transmitted Via Closed Circuit Feed on a 40-Second Delay to Ensure that Classified Information is Not Inadvertently Disclosed**

The prosecution of the five Accused in the September 11 terrorist attacks involve classified information relating to intelligence sources and methods. Accordingly, Commission

proceedings take place in Courtroom 2 which is a SCIF with limited access to those individuals who hold the requisite clearance and are involved in the case. However, the proceedings in Courtroom 2 are capable of being transmitted via closed circuit feed to locations outside the courtroom. Accordingly, the Military Judge has approved certain procedures to protect classified information from disclosure including a 40-second delay on the closed circuit feed that transmits outside the courtroom to the public viewing gallery and the remote viewing locations. The closed circuit feed is monitored by an Original Classification Authority to conduct a classification review and to promptly provide guidance to the Court Security Officer. This procedure is consistent with and required by Rule 10 of the Military Commissions Trial Judiciary Rules of Court which addresses the responsibility to protect classified information given to the Military Commission through the Court Security Officer (CSO) and the Assistant Court Security Officer (ACSO) in their roles as the principle security advisors to, *inter alia*, sitting trial judges and the Chief Trial Judge. *See* Rule 10.2 and 10.3. In addressing the scope of a Military Commission's responsibilities related to classified information, the rule specifically requires the CSO and ACSO to liaison with members of the intelligence community. *See* Rule 10.5.

There is absolutely no prohibition, nor is it in any way inconsistent with the protections for classified information, for an OCA to review the closed circuit audio-video transmission to conduct a classification review. Moreover, because the military judge is the undoubted sole authority on closure of commission proceedings, *see* R.M.C. 806, is the presiding officer of the military commission, *see* 10 U.S.C. §948j, and is thus an officer of the United States with corresponding responsibilities to safeguard classified information, *see* 10 U.S.C. §948p-1(a), it would be in no way inconsistent with such protections for an OCA to be delegated permission from the judge to suspend transmission while the judge calls a temporary recess within the 40-

second delay so as to consult with the CSO and consider whether any closure of the proceedings is necessary. Nevertheless, pursuant to the Commission's 29 January 2013 ruling, the OCA's role in reviewing the transmission in this military commission is clearly limited to providing guidance to the CSO on whether classified information has been disclosed. The audio feed observed by the OCA is the same audio feed transmitted outside Courtroom 2. As such, the OCA has no greater access to the proceedings than that provided to others who observe the proceedings from the public viewing gallery or any of the remote viewing locations.

The Defense claims that OCA observations of video and audio transmissions amounts to third party control of these proceedings is misplaced. Rule for Military Commission 801 provides that "[t]he military judge is the presiding officer in a military commission" and is vested with the authority and power to ensure "that military commission proceedings are conducted in a fair and orderly manner." R.M.C. 801(a). In light of this clear and unequivocal authority of the military judge to control commission proceedings, what third parties observe from a remote location far removed from the courtroom is irrelevant and has no bearing on these proceedings. Similarly, the Defense allegation that a former Staff Judge Advocate observed commission proceedings in another courtroom via a "Viper" system is completely irrelevant, as it also involved third party observation of proceedings in a separate case.

Finally, the Defense motion fails to articulate how a decision to briefly interrupt the audio and video transmission of these proceedings on 28 January 2013 constitutes evidence that confidential communications between defense counsel and the accused have been compromised. A brief interruption of the audio and video transmission in this case prompted by the OCA, or any other party for that matter, does not amount to a *per se* violation of the attorney-client privilege nor does it indicate that any outside party has improperly influenced these proceedings

in any way. The interruption at issue related to a colloquy between a Defense counsel and the Military Judge that occurred on the record and did not involve the monitoring of attorney-client communications.

## **II. ELC Holding Cells Are Only Visually Monitored for Security Purposes**

The security cameras in the ELC holding cells located immediately adjacent to Courtroom 2 do not infringe upon attorney-client communications. These holding cells have no audio devices and communications that take place in these cells cannot be monitored or recorded by camp personnel in any way. The video camera located in each holding cell is present for safety and security purposes only as they provide guards with an early visual warning that personnel in the holding cell may be in imminent danger of physical harm. These video cameras do not have any audio or video recording capability either. Therefore, they are incapable of permanently recording any privileged communications between the accused and their counsel.

## **III. The Joint Detention Facility Does Not Monitor Privileged Attorney-Client Conversations and Only Visually Monitors Meetings for Security Purposes.**

Confidential communications between the accused and their defense teams which take place in meeting rooms located in Echo II are equally safe from compromise. Like the ELC holding cells, these additional meeting rooms are each equipped with a video camera which has been put in place for safety and security purposes. These video cameras are necessary to enable the security force to respond as quickly as possible to the threat of physical danger in the meeting rooms.

Although there is audio monitoring capability in these meeting rooms, JDG personnel assigned to observe the video feed from these cameras do not activate this audio capability and the cameras lack the capacity to permanently record any audio. The JDG security personnel are trained to not monitor any attorney client conversations and there have been no instances of

conduct deviating from this policy. This proactive measure by security personnel has ensured that the attorney-client communications that take place in these rooms are privileged from disclosure. *See* Declaration of Colonel Bogdan.

Although the Defense motion cites allegations in which a detainee was interrupted in a meeting, there is absolutely no indication that the meeting involved an attorney-client meeting. In fact, even if true, the surrounding circumstances clearly indicate that such an instance involved [REDACTED] or law enforcement meeting. The Prosecution does not dispute that the meeting rooms at Echo II have audio capability which may have been employed for [REDACTED] or law enforcement meeting. The Defense proposition that other government agencies must be monitoring the meeting rooms because there are video cameras in the room defies reason. Upon information and belief, the JDG Commander issued an order on 1 February 2013 to remove any audio capability in the meeting rooms used for attorney client visits to alleviate any concern regarding the monitoring of attorney client communications. The JDG Commander is responsible for ensuring the safety of the detainees, guard force, and visitors to the facility. Video monitoring of the rooms serves a legitimate government function, and one that is only performed by the JDG.

**5. Conclusion.**

No entity of the United States Government is listening, monitoring or recording communications between the five Accused and their counsel at any location, and any inadvertent utterances by counsel or accused overheard by court reporters or recorded by FTR Gold are fully protected from disclosure to the Prosecution, which is in any case ethically bound to actively avoid contact with such utterances. The Prosecution respectfully requests that the Commission find that the Accused have failed to meet their burden of proof and persuasion as to this wholly

unsupported claim. The audio and visual equipment used in the Courtroom 2 and the ELC holding cells all serve valid and important purposes such as accurately recording these proceedings and ensuring the safety of all personnel involved with these proceedings. The audio capability of the rooms in Echo II, which are used for other purposes other than just attorney-client meetings, is never utilized during attorney-client visits, and although there may be the capability to hear audio on this particular equipment, security personnel do not activate this audio feature during defense visits. This equipment also lacks the capability to permanently record video or audio. The Prosecution states unequivocally that Counsel's privileged communications with the Accused are not being listened to, monitored, or recorded by the United States Government. Accordingly, the Prosecution respectfully requests that the Military Judge deny the Defense motion to abate these proceedings.

**6. Oral Argument**

The Prosecution requests oral argument.

**7. Witnesses and Evidence**

The Prosecution has made numerous individuals available for the Defense to interview. In response to Defense requests for witnesses, the Prosecution has agreed to produce the following witnesses:

- A. Colonel John Bogdan, Commander, Joint Detention Group
- B. CAPT Thomas Welsh, SJA
- C. <sup>3</sup> [REDACTED] Closed Circuit TV and Courtroom Technical Program Manager

**8. Attachments.**

- A. Certificate of Service dated 7 February 2013.
- B. Declaration of <sup>3</sup> [REDACTED] dated 7 February 2013.



- C. Declaration of COL John V. Bogdan, dated 7 February 2013.
- D. Declaration of <sup>3</sup> [REDACTED] dated 7 February 2013.
- E. Prosecution Joint Response to 31 January; 5 February; and 6 February Request for Witnesses for the 11 February 2013 Hearing.
- F. Prosecution Response to 10 January; 29 January; 30 January; and 4 February Request for Discovery.
- G. Prosecution Response to 4 February Joint Request for Production of Evidence Before the Hearing Scheduled for Week of 11 February 2013.
- H. Prosecution Response to 6 February Second and Third Request for Production of Evidence Before the Hearing Scheduled for Week of 11 February 2013.
- I. COL. John Bogdan 4 February 2013 Memorandum

Respectfully submitted,

//s//

Edward J. Ryan  
Trial Counsel  
Joanna Baltes  
Clayton Trivett  
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Captain, JA, USA  
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Mark Martins  
Chief Prosecutor  
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1610 Defense Pentagon  
Washington, D.C. 20301

# ATTACHMENT A

**CERTIFICATE OF SERVICE**

I certify that on the 7<sup>th</sup> day of February 2013, I filed AE 0133A, the **Government Response** to Joint Emergency Defense Motion to Remove Sustained Barrier to Attorney-Client Communication and Prohibit Any Electronic Monitoring and Recording of Attorney-Client Communication in any Location with the Office of Military Commissions Trial Judiciary and I served a copy on counsel of record.

//s//

Joanna Baltes  
Deputy Trial Counsel  
Office of the Chief Prosecutor  
Office of Military Commissions

# ATTACHMENT B

Declaration of<sup>3</sup> [REDACTED]

I, <sup>3</sup> [REDACTED], declare under penalty of perjury:

1. I currently serve as the Closed Circuit TV (CCTV) and Courtroom Technical Program manager at Guantanamo Bay Naval Station, Cuba (GTMO). I am employed by the Office of Military Commissions – South. I have served in this capacity since August 2008. My responsibilities include managing: 1) all audio and video feeds that originate from Courtrooms 1 and Courtroom 2; 2) recordings generated from the commercially available court reporter software called “For The Record” (FTR); and 3) the audio and video feeds to the closed circuit viewing locations outside the courtrooms.
2. The video equipment located in Courtroom 2 is used to transmit closed circuit audio and video feeds of the proceedings to locations at Guantanamo Bay Naval Station, Cuba (GTMO) and remote viewing locations in the United States. The closed circuit audio and video transmission feeds (CCTV) are transmitted to Fort Devens in Massachusetts, Fort Hamilton in New York, Joint Base McGuire-Dix-Lakehurst in New Jersey and Fort Meade in Maryland, so that victim family members, first responders, the media, and members of the public may watch the proceedings. The CCTV feeds to the locations are viewed on a 40 second delay, in accordance with the rules governing these Military Commission proceedings, as ordered by the Military Judge. The CCTV feed is also monitored by the court interpreters and by an Original Classification Authority in real-time to conduct classification determinations. Other locations which receive CCTV of the proceedings include the ELC Media Center, Building AV-29,

Building AV-34, , and spaces in the ELC assigned to the OMC-CA, OCP, OMCD, the OMC Special Security Officer ("SSO"), the court-interpreters, and the Data Trailer.

3. There are 23 microphones located on the various tables throughout the courtroom, to include at the podium, at counsel tables, and in the panel members' box. There are also 5 microphones suspended above the panel box, as well as two (2) inactive microphones at the Judge's Bench which is unique from the other microphones. If necessary, an additional microphone can be brought into the courtroom and attached to a classified stenographer's laptop. This type of microphone has limited range.
4. In 2011, the FTR Gold court reporter recording system was upgraded from 4 channels to 8 channels into which the audio from the installed microphones is routed and saved for the record of trial. This update was performed to make sure that the court reporters could better identify who is speaking for the court record when more than one participant was speaking at a time. The eight (8) channels into which the audio from these microphones is recorded by the FTR Gold software system are as follows: One (1) channel is for the Prosecution microphones; one channel (with microphones "A" and "B") are for the five Defense teams; one (1) channel is for the podium; one (1) channel is for the accuseds' microphones; one (1) channel is for the military judge's microphone, one (1) channel is for the panel members' microphones, (1) channel is for the microphone located on the witness stand, and (1) channel is for interpreters.
5. When the system is active, the base of the microphones have a green light indicating that they are "hot" or live, unless the button is pushed. When the mute button is pushed on the microphone, the green light dims and no audio whatsoever transmits from that microphone.



This is true of the feed available for the closed circuit transmission as well as the feed recorded by the FTR program and the live feeds. However, when only the mute button on the computer panel "Crestron" touch-screens on each table are pushed, this only prevents the microphones from amplifying and being sent to the closed circuit transmission. The microphone still feeds the FTR Gold software and the live feeds.

6. Additionally, the closed circuit feeds, whether live or on 40 second delay, all transmit only the audio that is amplified in the courtroom, therefore the live feeds hear the same audio as the victim CCTV sites or the sites in AV-34 and AV-29. The amplified feed that goes out to the CCTV sites is not audio or video recorded, except for the last 40 seconds of audio from any day's proceedings, which is then flushed out of the 40 second delay server by the technicians at the end of the day.
7. The FTR recordings are for use by the court reporters in preparing an official transcript of the proceedings. They are stored on a hard drive in the court reporter's computer in the courtroom. There is also a backup recording made on a hard drive in the AV office in the courtroom. Those recordings are eventually downloaded to a disc which is logged by the SSO and provided to the court reporters. The hard drives themselves are removed at the end of each day and maintained in a safe. These hard drives can only be used on the computer to which they are assigned. To my knowledge, the hard drives have never been handled by anyone other than my staff or the court reporters.



8. With regard to the AV equipment inside the courtroom, there are 10 video cameras in the courtroom for transmission purposes. They all function simultaneously. For those areas which receive the feed with the dynamic camera view, operators within the courtroom control-room determine which camera angle is actually being transmitted. Additionally, there is a security camera in the courtroom available for viewing by the guard force in the event they must respond to a security threat. No audio is transmitted from the security camera. There is also a motion sensor for security purposes in the court room that only detects motion when armed. No video transmissions are recorded and/or stored.
9. With regard to the ability to disrupt the audio/video feed from the courtroom via the 40-second delay provision, there is a device referred to as a "red button" that terminates any transmission feed from the courtroom. The courtroom security officer, the Judge, the court reporter, and the courtroom technicians all have the ability to instantly terminate all transmissions of the proceedings, both audio and video. In accordance with the Military Judge's 29 January 2013 Order, as of 1 February 2013, there was no longer outside capability to terminate the transmissions.
10. The Defense has the option of meeting with the Accused prior to or immediately after any proceeding, should time permit. If the Defense chooses to meet with the Accused, those meetings would occur in the ELC holding cells which provide a private meeting area for attorney client communications. There are no audio capability or listening devices in these spaces. There is a camera for security monitoring only, without any ability to transmit audio.

11. Courtroom 2 is a Sensitive Compartmentalized Information Facility (SCIF). Access to the courtroom is controlled at all times. The outer doors are secure via doors with a swipe card with keypad and a spin lock which requires a combination. Once the door to the building itself has been opened, access to the well of the courtroom is restricted with a combination cipher lock. The communications room at the rear of Courtroom 2 requires a swipe card, and only members of the Courtroom Technology staff within OMC have been granted swipe access to the data room. The communications room contains all the courtroom technology equipment. Members of my staff perform visual inspections of the facility to ensure unauthorized cameras, microphones or listening devices are not present. Additionally, prior to commission hearing sessions, installation security personnel perform standard security sweeps of the courtroom complex.

Dated this 7<sup>th</sup> day of February 2012

Office of Military Commissions

# ATTACHMENT C

DECLARATION

I, Colonel John V. Bogdan hereby declare and state:

1. I am a Colonel in the United States Army. I have been in the United States Army for 29 years; 21 of those years as a Military Police Officer. I have prior experience with detention operations. My current position is Commander, Joint Detention Group (JDG), Joint Task Force, Guantanamo (JTF-GTMO), Guantanamo Bay, Cuba. My responsibilities include providing for the safety and security of detainees, guards, and visitors in the detention facilities and while interacting with detainees. I have held this position since 7 June 2012, and report directly to Rear Admiral John W. Smith, Jr., Commander, JTF-GTMO.

2. Among my responsibilities as the JDG Commander is to facilitate meetings between detainees and their Habeas Counsel and/or Military Commissions Defense Counsel. These meetings take place at a facility that has individual meetings rooms called Echo II. These meeting rooms are also used for meetings other than attorney-client meetings, such as meetings with detainees and law enforcement personnel, and other non-privileged meetings.

3. Throughout this declaration, when I refer to the word "monitoring," I am referencing a real-time ability to watch or listen. When I refer to "recording" in this declaration, I am



referencing the ability to electronically save what has been monitored and then play it back. The two terms are distinct.

4. Each of the rooms in Echo II is equipped with video cameras to facilitate remote video monitoring for security purposes by the guard force. Specifically, guard members video monitor the meetings in a building separate from the meeting rooms. This enables the guards to respond instantly in the event a detainee would attempt to harm an individual in the room. There is no capability to record the video monitoring.

5. As Echo II is used for more than just attorney-client meetings, there exists the capability to also monitor audio in the meeting rooms, however, there is no capability to record audio or video from the meetings, and additional equipment would need to be installed in order to do so. Meetings between detainees and attorneys in Echo II are not monitored via audio at any time. To my knowledge, meetings between detainees and attorneys were never audio-monitored at JTF-GTMO to my arrival. Meetings between detainees and the ICRC are not recorded.

6. Guard force personnel are trained and directed to not listen to conversations between attorneys and detainees. I am not aware of any instance in which guards or other personnel have monitored or recorded, whether intentionally or

unintentionally, meetings between detainees and attorneys, either during my time or before my time.

7. On 4 February 2013 I issued written guidance to the Joint Detention Group regarding the monitoring of Attorney-Client Meetings. Although our task force had only recently learned that the audio capability existed, I have since ordered that all audio capability be disconnected.

8. I declare under the penalty of perjury the foregoing is true and correct to the best of my knowledge.



John V. Bogdan  
Colonel, USA, Commanding

Dated: 7 February 2013

# ATTACHMENT D



I, [REDACTED], make the following statement, under penalty of perjury, concerning the audio equipment installed in the state of the art Expeditionary Legal Center (ELC) located at Guantanamo Bay, Cuba.

1. I am currently the Chief Court Reporter for the Office of Court Administration (OCA), Office of Military Commissions (OMC), and I have over 24 years of experience as a Court Reporter. Prior to accepting this position, I owned my own court reporting business. During that time, I primarily did contract court reporting/transcription work for the government. Prior to that, I served in the United States Army for over 20 years and retired as a Master Sergeant (E8) on 1 February 2006. While on active duty, I served as the Chief Court Reporter for the Army. In that capacity, I taught at the Army's Judge Advocate General's School from October 1999 to June 2003. On 15 August 2011, I accepted my current position with the Office of Military Commissions. I do not work for the Office of the Chief Prosecutor. I report directly to the Chief, OCA, OMC. In my capacity as Chief Court Reporter, I currently supervise four military court reporters (two Army, one Navy, and one Air Force) and one civilian court reporter (it has been as many as five military and two civilians). Additionally, during Military Commissions hearings, I supervise six realtime Stenographers in the production of the "unofficial/unauthenticated" transcript for daily posting to OMC's Web site.

2. I have worked with the system known as FTR (ForTheRecord) Gold (FTR Reporter and FTR Player) for more than 10 years. It is the standard for court reporting and is the same system used to record and prepare a record of trial in courts-martial and most courts throughout the United States. FTR Reporter supports up to 8-channel digital recording. Some of the additional features of this system include the ability to save recordings as an audio CD, rapid duplication of selected portions of the record, and simultaneous archiving and backup.

3. The microphones in the courtroom give counsel the ability to press a button to "mute" them when having private conversations between counsel or between counsel and client. When counsel presses the button to mute the microphone, there is no recording of conversation on that microphone. Prior to counsel appearing in the ELC courtroom, they are advised of the microphones and the fact that a recording is taking place. In addition, there are signs as you enter the courtroom reminding everyone to

assume the microphones are live when you are in the courtroom and, therefore, the conversation may be being recorded. Counsel are also instructed on how to mute the microphones, if necessary, and there are signs located at each table reminding counsel to mute microphones for sidebar conversations. All counsel are frequently warned that if they do not mute their microphones it is possible that their conversations will be recorded. The possibility of these conversations being recorded is no different than in any other courtroom in which counsel may appear to try cases.

7 February 2013  
Date

3  
[Redacted]  
Chief Court Reporter

# ATTACHMENT E



OFFICE OF THE  
CHIEF PROSECUTOR

**DEPARTMENT OF DEFENSE**  
OFFICE OF THE CHIEF PROSECUTOR OF MILITARY COMMISSIONS  
1610 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1610

MEMORANDUM FOR Defense Counsel, U.S. v. Mohammad, et al

SUBJECT: Prosecution Joint Response to 31 January; 5  
February; and 6 February Request for Witnesses  
for the 11 February 2013 Hearing.

1. The Prosecution has received various Defense requests for the production of witnesses for the 11 February 2013 Hearing. The Prosecution hereby responds to all of the Defense requests as set forth below.

2. The following witnesses have been requested by the Defense for the 11 February 2013 Hearing: Colonel John Bogdan, Commander, Joint Detention Group; CAPT Thomas Welsh, SJA; 3 [REDACTED], Audio visual specialist; Brigadier General Thomas Hartmann; CAPT Patrick McCarthy (or deposition testimony of CAPT McCarthy in lieu of BG Hartmann and CAPT McCarthy); Mr. Hambali; the individuals who are most knowledgeable about the installation, capabilities and operation of electronic monitoring and security systems; the individual or individuals who are most knowledgeable about the promulgation and purpose of the 27 December 2011 Order, §§ 6.a & 9; The person who holds the current support contract for the audiovisual system in Courtroom #2, purportedly a person affiliated with Quantum Technologies, Inc; the person who activated the courtroom security device in Court Room #2 on 28 January 2013; CDR Jennifer Strazza ASJA; LT Alexander Homme ASJA; LTC Ramon Torres ASJA.

3. As to the individual witnesses requested by the Defense, the Prosecution responds, in turn:

1. Colonel John Bogdan, Commander, Joint Detention Group  
**a. Approved.**
2. CAPT Thomas Welsh, SJA  
**a. Approved.**
3. 3 [REDACTED]  
**a. Approved.**

4. Brigadier General Thomas Hartmann
  - a. The Defense motion claims that CAPT McCarthy testified that General Hartmann sought access to video tapes of interviews of the accused conducted by representatives of the ICRC (Citing to page 41-42). Upon review of the transcript, however, and verified in discussions with CAPT McCarthy, it is clear he is referring to videotapes of foreign delegation visits, and not ICRC meetings, which likely did not occur in Echo II and were never monitored. As such, the factual predicate upon which this witness rests is unsupported by the transcript and therefore has no relevance to the issue raised in AE 133. As such, this witness is denied.
5. CAPT Patrick McCarthy (or deposition testimony of CAPT McCarthy in lieu of BG Hartmann and CAPT McCarthy);
  - a. Please see response to 4a above for identical reasons of denial of CAPT McCarthy. While the Prosecution reserves the right to object to the relevancy of the transcript described above, should the Military Judge overrule the Prosecution's relevancy objection, the Prosecution does not object to its admissibility.
6. Mr. Hambali
  - a. Denied. As set forth in more detail in the Prosecution's response to AE 133 and the declarations attached thereto, the Prosecution concedes there is audio (but not recording) capability in the meeting rooms in Echo II, which is used for purposes other than just attorney-client meetings. Attorney-client meetings have never been monitored for audio at Echo II. Without verifying whether or not the alleged meeting set forth in the defense proffer occurred, the Prosecution notes that the proffered synopsis of Mr. Hambali testimony details a meeting that would not constitute a privileged attorney-client meeting. As such, it is not relevant to the pending motion. To the extent Mr. Hambali's testimony would help establish a capability to monitor audio at Echo II, the Prosecution already concedes this fact. Consequently, Mr. Hambali's testimony is cumulative.

7. The individuals who are most knowledgeable about the installation, capabilities and operation of electronic monitoring and security systems by which attorney-client communications are subject to surveillance, recording and/or transmission to the government, other government agencies and original classification Authority;

**a. As set forth in the Prosecution's response to AE 133, and the declarations attached thereto, attorney-client communications are not subject to surveillance, recording and/or transmission to anyone in the U.S. Government, save the court-reporters if the Defense fails to hit the mute button on the microphone or speaks loudly enough for other microphones to pick up their conversations. 3 [REDACTED] and Colonel Bogdan are both capable of testifying about the capabilities and operation of the audio and video systems in Court Room II, the ELC trailers, and Echo II, and they have both been made available as witnesses.**

8. The individual or individuals who are most knowledgeable about the promulgation and purpose of the 27 December 2011 Order, §6.a and 9, to specify the language or languages that will be used during the meeting;

**a. CAPT Welsh can testify regarding this issue.**

9. The person who holds the current support contract for the audiovisual system in Courtroom #2, purportedly a person affiliated with Quantum Technologies, Inc.

**a. Denied. This witness is not relevant to the current issue before this military commission.**

10. The person who activated the courtroom security device in Court Room #2 on 28 January 2013.

**a. Denied. The identity of this person is not relevant to the issue raised in AE 133. The Prosecution response to AE 133 and the declarations attached thereto make clear that the audio feed transmitted outside the courtroom is the identical "amplified" feed viewed by all public observers of these proceedings at the various remote sites outside of the court and in**



the courtroom gallery. As such, the person who activated the court room security device is not relevant to the instant motion.

11. CDR Jennifer Strazza
  - a. The Defense filed a motion to compel on 6 February 2013 for this witness. There was no previous synopsis provided by Defense for this witness. The Prosecution was willing to stipulate to the testimony of this witnesses but the Defense did not formally request this witness until 6 February 2013. Given the late date of this request, the Prosecution is willing to provide this witnesses via VTC or via telephonic testimony.
12. LT Alexander Homme
  - a. The Defense filed a motion to compel on 6 February 2013 requesting this witness. There was no previous synopsis provided by Defense for this witness. The Prosecution was willing to stipulate to the testimony of this witnesses but the Defense did not formally request this witness until 6 February 2013. Given the late date of this request, the Prosecution is willing to provide this witnesses via VTC or via telephonic testimony.
13. LTC Ramon Torres.
  - a. The Defense filed a motion to compel on 6 February 2013 requesting this witness. There was no previous synopsis provided by Defense for this witness. The Prosecution was willing to stipulate to the testimony of this witnesses but the Defense did not formally request this witness until 6 February 2013. Given the late date of this request, the Prosecution is willing to provide this witnesses via VTC or via telephonic testimony.

Respectfully,

//s//

\_\_\_\_\_  
Clay Trivett  
Deputy Trial Counsel

# ATTACHMENT F



OFFICE OF THE  
CHIEF PROSECUTOR

**DEPARTMENT OF DEFENSE**  
OFFICE OF THE CHIEF PROSECUTOR OF MILITARY COMMISSIONS  
1610 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1610

MEMORANDUM FOR Defense Counsel for Ali Abdul Aziz Ali

SUBJECT: Prosecution Response to 10 January; 29 January;  
30 January; and 4 February Request for Discovery

1. The Prosecution has received the Defense requests for discovery, dated 10 January; 29 January; 30 January; and 4 February 2013. The Prosecution hereby responds to these Defense requests as set forth below.
2. The Defense in its memoranda on 10 January, 29 January, 30 January, and 4 February 2013 requests production of materials relating to AE 133. As to the individual material for discovery requested by the Defense, the Prosecution responds, as follows, in bold:

10 January 2013 Request

All recordings, books, papers, documents, photographs, tangible objects, buildings, places, and/or the reports/results of examinations, tests, or experiments, that relate to any monitoring and/or recording of the communications to, from, and/or between Mr. al Baluchi and counsel. This includes but is not limited to monitoring and/or recording of in-court communications and, communications from the time that Mr. al Baluchi was placed at Guantanamo Bay, Naval Station to the present. If no such monitoring and/or recording has occurred, the defense requests a statement to that effect from government counsel.

**Defense Counsel in this case meet with clients at one of three places: 1-Echo II; 2-the trailers outside of the ELC; 3-In the courtroom. Per your request above, government counsel is stating that no audio monitoring or recording of communications to, from, and/or between Mr. al Baluchi and his counsel have occurred in Echo II or the trailers outside the ELC. To the extent the microphones that feed the courtroom's court reporter software, FTR Gold, may have inadvertently or, by failure to press the mute button, recorded attorney-client communications, the Prosecution has not**

accessed those files and has no intention of doing so if such recordings exist. The Prosecution has no objection to a Defense request to listen to the recordings of the Defense channels or the Accused's channels. The Prosecution would have no objection to a Military Judge's Order prohibiting the government from accessing the recordings of those channels. For more information on how the audio works in the courtroom, see Prosecution response to AE 133 and the declaration of 3 [REDACTED] attached thereto.

29 January 2013

1. The government identify a person with full knowledge of the design and capabilities of audio capabilities in Courtroom 2, including but not limited to capabilities of providing audio feeds to persons outside the courtroom; and

On 5 February Defense requested 3 [REDACTED] as a witness. 3 [REDACTED] is a person with full knowledge of the design and audio capabilities in Courtroom 2. It is the Prosecution's understanding that Lt Col Sterling Thomas, Defense co-counsel for the accused, has already had access to Mr. 3 [REDACTED]. Mr. 3 [REDACTED] will also be available on-island the week of 11 February 2013. Based on this, all Prosecution obligations pertaining to this request have been satisfactorily fulfilled.

2. The government identify a person with full knowledge of audio feeds to persons and organization outside of Courtroom 2.

On 5 February 2013, Defense requested 3 [REDACTED] as a witness. 3 [REDACTED] is a person with full knowledge of the design and audio capabilities in Courtroom 2. Other than hearing the audio forty seconds after the delay, everyone outside the courtroom receives the audio feeds from the "amplification" feed, which is identical to the audio transmitted in court and that which is transmitted outside the court room on closed-circuit T.V. As such, the Defense request is denied as the persons who receive the audio feeds are not relevant to the current issue before the military commission.

30 January 2013

The government provide and/or produce copies of the specifications of the audio system (name, model, and year of manufacture) in Courtroom #2. This includes but is not limited to system specifications, plans, wire diagrams, infrastructure, and/or blueprints.

**The Prosecution has identified that certain drawings of the audio-visual system exist, and you may inspect them down at the ELC. Your Point of Contact for viewing these items is 3 [REDACTED].**

4 February 2013

1. The government produce system design and "as-built" drawings of the audiovisual system(s) at Courtroom #2, Expeditionary Legal Complex. This request is fairly encompassed in previous requests dated 10 January 2013 (DR-023-AAA) and 30 January 2012 (DR-023B-AAA), but is nevertheless restated here out of an abundance of caution.

**The Prosecution has identified that certain drawings of the audio-visual system exist and the Defense may inspect them at the ELC. The Point of Contact for viewing these items is 3 [REDACTED].**

2. The government identify (by pseudonym, if the government validly invokes privilege over his/her/their identity) and make available for interview the person or persons who activated the courtroom security device and/or interrupted the audiovisual feed on 28 January 2013.

**The Prosecution response to AE 133 and the declarations attached thereto make clear that no one is monitoring any attorney-client conversations in the courtroom, the trailers to the ELC, or at Echo II where defense meetings with your clients are held. As such, this request to interview the person or persons who activated the courtroom security device on 28 January 2013 is not relevant to the current issue and is denied.**

3. The government make available for inspection the location and monitoring technology used by the person or persons who activated the courtroom security device and/or interrupted the audiovisual feed on 28 January 2013.

**The Prosecution response to AE 133 and the declarations attached thereto make it clear that no one is monitoring any attorney-client conversations in the courtroom, the trailers to the ELC, or at Echo II where defense meetings with your clients are held. As such, this request to inspect the location and monitoring technology used by the person or persons who activated the courtroom security device and/or interrupted the audiovisual feed on 28 January 2013 is not relevant to the current issue and is denied.**

4. The government produce any reviews, reports, audits, or similar documents regarding the audiovisual system(s) at Courtroom #2, Expeditionary Legal Complex.

**The Prosecution has identified that certain drawings of the audio-visual system exist, and Defense may access them at the ELC. The Point of Contact for viewing these items is 3 [REDACTED]. As to the request for further reviews, reports, audits, or similar documents regarding the audiovisual system(s), that request is denied because such requested material is not relevant to the current issue.**

5. The government produce any request for proposal, contract, statement of work, invoice, or similar document regarding the audiovisual system(s) at Courtroom #2, Expeditionary Legal Complex.

**This request is denied because such requested material is not relevant to the current issue.**



6. The government produce any classification guide governing the audiovisual system(s) at Courtroom #2, Expeditionary Legal Complex.

**No such guide exists.**

Respectfully submitted,

//s//

Clay Trivett  
Deputy Trial Counsel

# ATTACHMENT G



OFFICE OF THE  
CHIEF PROSECUTOR

**DEPARTMENT OF DEFENSE**  
OFFICE OF THE CHIEF PROSECUTOR OF MILITARY COMMISSIONS  
1610 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1610

MEMORANDUM FOR Defense Counsel, U.S. v Mohammad, et al.

SUBJECT: Prosecution Response to 4 February Joint Request for  
Production of Evidence Before the Hearing Scheduled  
for Week of 11 Feb 2013

1. The Prosecution received the Defense request for discovery, dated 4 February 2013. The Prosecution hereby responds to the Defense request. In doing so, the Prosecution notes that it is aware that various Defense counsel have already spoken with various courtroom technology personnel over the past week, which included at least one member of the Defense for Mr. Mohammad having a demonstration of how the audio is not recorded when the mute button is pressed.

2. The Defense in its memorandum of 4 February 2013 requests production of materials relating to AE 133. As to the specific lettered paragraphs containing information requested by the Defense, the Prosecution responds as follows, in bold:

- a. Any and all information, records, documents, and communications that directly or indirectly mention or pertain to any person's ability to listen to or watch transmissions of Commission hearings at Courtroom II, Naval Base Guantanamo Bay.

**Please see the Prosecution Response to AE 133, and the declarations attached thereto for responsive discovery.**

- b. A 16 October 2012 hearing in this case was closed due to allegedly classified statements being made by defense counsel. Please provide any and all information, records, documents, and communications regarding this incident including, but not limited to, audio recordings, written records, summaries of oral communications including briefings, and email, between and among members of the Convening Authority's office, Joint Task Force-Guantanamo, the Prosecution, and the Trial Judiciary.

**Please see Unofficial/Unauthenticated Transcript, United States v. KSM, et al (17 October 2012), at 804-05 wherein**

**the Military Judge determined that the security button was pushed in error based on a hypothetical statement.**

- c. A 28 January 2013 hearing in this case was closed due to allegedly classified statements being made by defense counsel. Please provide any and all information, records, documents, and communications regarding this incident including, but not limited to, audio recordings, written records, summaries of oral communications including briefings, and email, between and among members of the Convening Authority's office, Joint Task Force-Guantanamo, the Prosecution, and the Trial Judiciary.

**Please see Unofficial/Unauthenticated Transcript, *United States v. KSM, et al*, for January hearings where discussions occurred on the record throughout the week.**

- d. At the beginning of the Commission hearing on 29 January 2013, the Prosecution hand-delivered to the Defense a single-page document stating, in whole:

Classification Guidance for 40-Second Delay:

(U) An OCA reviews the closed-circuit feed for the proceedings to conduct a classification review to ensure that classified information is not inadvertently disclosed. When the parties depress the mute button on the microphone, no audio is transmitted through the closed-circuit feed.

Please provide:

- i. Locations to which audio is transmitted even when the "mute" button on Courtroom II microphones are pressed.

**Audio is not transmitted when the mute button is pressed on the microphone. See Declaration of <sup>3</sup> [REDACTED] attached to the Prosecution's Response to AE 133.**

- ii. Names, titles, and contact information of individuals with access to audio transmissions or recordings captured even when the "mute" button on Courtroom II microphones are pressed.

**Audio is not transmitted when the mute button is pressed. See Declaration of 3 [REDACTED] attached to the Prosecution's Response to AE 133.**

- iii. The classification guidance from which the above guidance was obtained.

**There is no classification guidance from which the above guidance was obtained.**

- iv. The Original Classification Authority's Classification Guide from which the above guidance was obtained.

**There is no classification guidance from which the above guidance was obtained.**

- e. Any and all guidance, memoranda, and procedures not contained in Manual for Military Commissions, Regulation for Trial by Military Commission, or the Trial Judiciary Rules of Court regarding the operation of audio and video transmissions from Courtroom II.

**Please see the Prosecution Response to AE 133, and the declaration attached thereto by 3 [REDACTED] regarding the operation of audio and video transmissions from Courtroom II.**

- f. Names of individuals who designed, built, installed, and/or maintain/service any audio-recording or audio-streaming devices in Courtroom II.

**This request is denied in regard to the names of individuals who designed, built, or installed the audio because such requested material is not relevant.**

- g. Names of individuals who designed, built, installed, and/or maintain/service any video-recording or video-streaming devices in Courtroom II.

**This request is denied with regard to the names of individuals who designed, built, or installed the video because such requested material is not relevant.**

- h. Plans, written procedures, and any descriptions of locations to which audio transmissions of Commission hearings in Courtroom II are streamed live. (By "streamed live," the Defense transmissions that can be heard or seen outside of Courtroom II contemporaneous to Commission proceedings.)

**The issue raised in AE 133 regards whether anyone is listening into attorney-client conversations. The Prosecution response to AE 133 and the declarations attached thereto make it clear that no one is listening to any attorney-client conversations in the courtroom, the trailers to the ELC, or at Echo II where defense meetings with your clients are held. As such, the Defense request as to where the audio is streamed live is denied because such requested material is not relevant to the current issue.**

- i. Plans, written procedures, and any descriptions of locations to which video transmissions of Commission hearings in Courtroom II are streamed live.

**This request is denied because such requested material is not relevant.**

- j. Plans, written procedures, and any descriptions for how any audio transmissions of Commission hearings in Courtroom II are recorded.

**Please see the Prosecution Response to AE 133, and declaration attached thereto by 3 [REDACTED] for how any audio transmissions of Commission hearings in Courtroom II are recorded.**

- k. Plans, written procedures, and any explanations for how any video transmissions of Commission hearings in Courtroom II hearings are recorded.

**Video of Commission hearings are not recorded. Please see the Prosecution Response to AE 133, and declaration attached thereto by 3 [REDACTED].**



- l. Locations where recorded audio and/or video transmissions of Commission hearings in Courtroom II are maintained.

**Recorded audio is maintained on two hard drives located in the backroom of the courtroom and with the court reporter. Please see the Prosecution Response to AE 133, and declaration attached thereto by 3 [REDACTED].**

- m. Any and all audio and/or video recordings of the 5 May 2012 arraignment, the 16 October 2012 motion hearings, and the 28 January 2013 motion hearings in this case.

**No video recordings were made of any hearings in this case. Court reporters have access to audio recordings; the Prosecution does not. The Prosecution will not oppose a Defense motion to the Military Judge requesting that the Trial Judiciary provide the audio recordings to the Defense for the Defense channels and the channel that records the accused.**

- n. Locations where any transmissions of Commission hearings in Courtroom II are viewed and/or listened to by any person.

**The issue raised in AE 133 regards whether anyone is listening into attorney-client conversations. The Prosecution response to AE 133 and the declarations attached thereto make it clear that no one is listening to any attorney-client conversations in the courtroom, the trailers to the ELC, or at Echo II where defense meetings with your clients are held. As such, this request as to the locations where any transmissions of Commission hearings are viewed and/or listened to by any person is not relevant to the current issue.**

- o. Names, titles, and contact information for persons who have access to audio transmissions of any proceedings in this Commission, whether live or delayed.

**This request is denied because such requested material is not relevant to the current issue.**

- p. Names, titles, and contact information for persons who have access to video transmissions of any proceedings in this Commission, whether live or delayed.

**This request is denied because such requested material is not relevant to the current issue.**

- q. Names, titles, and contact information for persons, other than the Courtroom II court reporter, who have access to any transmissions heard by the court reporter in this Commission

**Please see the Prosecution Response to AE 133, and declaration attached thereto by 3 [REDACTED].**

- r. Contract requirements, if any, published for entities to bid on contracts for the design, construction, installation, and/or maintenance/service of audio- and video-recording devices in Courtroom II.

**This request is denied because such requested material is not relevant to the current issue.**

- s. Contracts, Memoranda of Agreement, Memoranda of Understanding, or any other recorded or summarized agreement by any entity contracted to design, construct, install, and/or maintain/service audio- and video-recording devices at Courtroom II.

**This request is denied because such requested material is not relevant to the current issue.**

- t. A list of all equipment located in Courtroom II for the purpose of transmitting or recording audio and/or video.

**Please see the Prosecution Response to AE 133, and the declarations thereto that describe FTR Gold and the two audio feeds that are generated.**

- u. Any and all information, records, documents, and communications that directly or indirectly mention or pertain to the ability to listen to or watch meetings between Accused and counsel at the Echo II facility, Naval Station Guantanamo Bay.

**Please see the Prosecution Response to AE 133, and the declaration thereto signed by Colonel Bogdan. While there is the capability to transmit audio in the meeting rooms in Echo II, which are not solely used for defense meetings with their client, this capability has never been utilized during attorney-client meetings.**

- v. Names, titles, and contact information for persons who have ever viewed a live or recorded meeting between Accused and defense counsel at Echo II.

**Please see the Prosecution Response to AE 133, and the declaration thereto from Colonel Bogdan who commands the task force that video monitors these meetings for security purposes. To the extent that you seek contact information for every person who ever viewed a live meeting, that request is denied as being overly broad. Meetings between the Accused and defense counsel at Echo II are not recorded.**

- w. Names, titles, and contact information for persons who have ever listened to a live or recorded meeting between Accused and defense counsel at Echo II.

**Please see the Prosecution Response to AE 133, and the declaration thereto from Colonel Bogdan, who declares that guards do not listen to the live meetings between Accused and defense counsel. As such, the Prosecution is unaware of any person who meets this description.**

- x. Contract requirements, if any, published for entities to bid on contracts for the design, construction, installation, and/or maintenance/service of audio- and video-recording devices at Echo II.

**This request is denied because such requested material is not relevant to the current issue.**

- y. Contracts, Memoranda of Agreement, Memoranda of Understanding, or any other recorded or summarized agreement by any entity contracted to perform design, construction, installation, and/or maintenance/service of audio- and video-recording devices at Echo II.

**This request is denied because such requested material is not relevant to the current issue.**

- z. A list of all equipment located in Echo II for the purpose of transmitting or recording audio and/or video.

**For the capabilities of the equipment in Echo II, see the Prosecution's Response to AE 133 and declaration attached thereto from Colonel Bogdan. The request for a listing of all equipment located in Echo II is denied as not relevant to the current issue. Meetings between the Accused and defense counsel at Echo II are not recorded in any way. No one listens to Defense meetings with their clients at Echo II or any other location.**

- aa. Any and all information, records, documents, and communications that directly or indirectly mention or pertain to the ability to listen to or watch meetings between Accused and counsel at the ELC holding cells, Naval Station Guantanamo Bay.

**There is no ability to monitor audio communications in the ELC holding cells. In regard to the capability to observe meetings between Accused and counsel at the ELC holding cells, see the Prosecution's Response to AE 133 and declaration attached thereto by 3 [REDACTED].**

- bb. Names, titles, and contact information for persons who have ever viewed a live or recorded meeting between Accused and defense counsel at ELC holding cells.

**There are no audio or video recordings at the ELC holding cells. There is no capability to monitor audio whatsoever in the holding cells. The request for names, titles, and contact information for persons who have ever viewed a live or recorded meeting between Accused and defense counsel at ELC holding cells is both overbroad and not relevant to the current issue. For safety purposes only, guards observe the video feed during meetings.**

- cc. Names, titles, and contact information for persons who have ever listened to a live or recorded meeting between Accused and defense counsel at ELC holding cells.

**There is no capability to monitor audio in the holding cells and the Prosecution is unaware of any person who has listened to a live meeting between Accused and defense counsel at the ELC holding cells.**

- dd. Contract requirements, if any, published for entities to bid on contracts for the design, construction, installation, and/or maintenance/service of audio- and video-recording devices at ELC holding cells.

**This request is denied because such requested material is not relevant to the current issue.**

- ee. Contracts, Memoranda of Agreement, Memoranda of Understanding, or any other recorded or summarized agreement by any entity contracted to perform design, construction, installation, and/or maintenance/service of audio- and video-recording devices at ELC holding cells.

**This request is denied because such requested material is not relevant to the current issue.**

- ff. A list of all equipment located in the ELC holding cells for the purpose of transmitting or recording audio and/or video.

**There is a security camera in each of the ELC holding cells that does not have the capability to transmit audio. Please see the Prosecution Response to AE 133, and the declarations thereto by 3 [REDACTED].**

- gg. Any and all information, records, documents, and communications regarding any and all briefings and/or guidance provided by any person to the Military Judge regarding operations and capabilities in Courtroom II including, but not limited to, audio recordings, video recordings, written records, PowerPoint slides, summaries of oral communications including briefings, and email.

**This request is denied because such requested material is not relevant to the current issue.**

- hh. Any and all information, records, documents, and communications regarding any and all briefings and/or

guidance provided by any person to the Military Judge regarding classified information as it relates to this case including, but not limited to, audio recordings, video recordings, written records, PowerPoint slides, summaries of oral communications including briefings, and email.

**This request is denied because such requested material is not relevant to the current issue.**

ii. Any and all information, records, documents, and communications regarding any and all briefings and/or guidance provided by any person to any member of the Prosecution regarding operations and capabilities in Courtroom II including, but not limited to, audio recordings, video recordings, written records, PowerPoint slides, summaries of oral communications including briefings, and email.

**Please see the Prosecution Response to AE 133, and the declarations thereto. The Prosecution received the same briefing on the court room capabilities that the Defense Counsel did in May 2012 and has made personnel available to the Defense who can describe operations and capabilities in Courtroom II.**

jj. Any and all information, records, documents, and communications regarding any and all briefings and/or guidance provided by any person to any member of the Prosecution regarding classified information as it relates to this case including, but not limited to, audio recordings, video recordings, written records, PowerPoint slides, summaries of oral communications including briefings, and email.

**This request is denied because such requested material is not relevant to the current issue.**

Respectfully submitted,

                    //s//                      
Clay Trivett



Deputy Trial Counsel

Mark Martins  
Chief Prosecutor  
Military Commissions

# ATTACHMENT H



OFFICE OF THE  
CHIEF PROSECUTOR

**DEPARTMENT OF DEFENSE**  
OFFICE OF THE CHIEF PROSECUTOR OF MILITARY COMMISSIONS  
1610 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1610

MEMORANDUM FOR Defense Counsel, U.S. v Mohammad, et al.

SUBJECT: Prosecution Response to 6 February Second & Third  
Request for Production of Evidence Before the Hearing  
Scheduled for Week of 11 Feb 2013

The Prosecution has received the Defense second and third requests for discovery, dated 6 February 2013. The Prosecution hereby responds to both Defense requests as set forth below. As to the specific lettered paragraphs containing information requested by the Defense, the Prosecution responds, as follows, in bold:

Second Request

- a. Any and all documents, orders, memoranda, notes, emails or other written communication regarding the use of audio monitoring devices installed in the meeting rooms where High Value Detainees meet with their attorneys (ECHO II).

**Denied. Please see the Prosecution Response to AE 133, and the declaration from Colonel Bogdan attached thereto, for information responsive to this discovery request.**

- b. Any and all documents, orders, memoranda, notes, emails or other written communication regarding procurement of audio monitoring devices designed to look like household smoke detectors by JTF-GTMO, JDG or other agencies charged with procuring such devices for use in ECHO II.

**Denied. Please see the Prosecution Response to AE 133, and the declaration from Colonel Bogdan attached thereto, for information responsive to this discovery request.**

- c. Any and all documents, orders, memoranda, notes, emails or other written communication regarding the use of translators not associated with defense counsel used to translate communications in the ECHO II facility.

**Denied as overbroad and not relevant to the pending issue.**

- d. Names and identifying information of any non-defense translators used to translate communications between/among detainees and members of defense teams in ECHO II.

**The U.S. Government does not translate communications between/among detainees and members of defense teams in ECHO II.**

- e. Any and all documents, orders, memoranda, notes, emails or other written communication regarding the audio and/or video monitoring and recording of an interview of Majid Khan or any other detainee by the prosecution or law enforcement officials in any Echo II meeting rooms.

**Denied. This request is overbroad and not relevant to AE 133. The Prosecution concedes that the capability exists to monitor audio from the meeting rooms in Echo II, but this capability is not utilized for attorney-client meetings. Interviews by the prosecution or law enforcement officials are not attorney-client meetings and thus are not relevant to the current issue pending in AE 133.**

- f. Any and all documents, orders, memoranda, notes, emails or other written communication regarding an order issued by JDG Commander COL John Bogdan in or around July, 2012 to cease and/or desist the audio monitoring of attorney-client meetings in ECHO II.

**No such order exists. There has never been any audio monitoring of attorney-client meetings in ECHO II.**

- g. Any and all documents, orders, memoranda, notes, emails or other written communication from JTF-GTMO guard forces to JTF-GTMO or JDG commanders related to questions by defense counsel about audio and/or video monitoring capabilities in ECHO II attorney-client meeting rooms.

**Denied. Inquiries from defense counsel, to the extent they exist, are not relevant to the issues presented to AE 133.**

- h. Any and all documents, orders, memoranda, notes, emails or other written communication between/among the JTF-GTMO SJA and the JTF-GTMO and JDG commanders related to questions by defense counsel about audio and/or video monitoring capabilities in ECHO II attorney-client meeting rooms.

**Denied. Inquiries from defense counsel, to the extent they exist, are not relevant to the issues presented to AE 133.**

- i. Any and all documents, orders, memoranda, notes, emails or other written communication between/among the JTF-GTMO SJA, the JTF-GTMO and JDG commanders, and the Office of Chief Prosecutor related to questions by defense counsel about audio and/or video monitoring capabilities in ECHO II attorney-client meeting rooms.

**Denied. Inquiries from defense counsel, or responses thereto, to the extent they exist, are not relevant to the issues presented to AE 133.**

- j. Any and all documents, orders, memoranda, notes, emails or other written communication from JTF-GTMO guard forces and/or JTF-GTMO or JDG commanders related to questions by defense counsel about audio and/or video monitoring capabilities in ECHO II attorney-client meeting rooms.

**Denied. Inquiries from defense counsel, or correspondence in relation to such inquiries, to the extent they exist, are not relevant to the issues presented to AE 133.**

- k. Any and all documents, orders, memoranda, notes, emails or other written communication between/among the JTF-GTMO Staff Judge Advocate personnel related to questions by defense counsel about audio and/or video monitoring capabilities in ECHO II attorney-client meeting rooms.

**Denied. Inquiries from defense counsel, or correspondence in relation to such inquiries, to the extent they exist, are not relevant to the issues presented to AE 133.**

- l. Any and all documents, orders, memoranda, notes, emails or other written communication regarding work orders to

disconnect audio monitoring and/or recording devices previously installed in ECHO II attorney-client meeting rooms.

**COL Bogdan ordered the audio capability disconnected on 1 February 2013.**

Third Request

- a. Any and all information, records, documents, and communications, including email, that directly or indirectly mention or pertain to the October 2011 seizure and review of the Accused's attorney-client privileged information.

**The requested information is not relevant to AE 133, but the Prosecution will respond nonetheless to avoid further delay in these proceedings. As to the above request, there has been extensive testimony regarding the base-line review from Captain Thomas Welsh and Admiral Woods in U.S. v al Nashiri. This testimony is available for review by the Defense.**

- b. Names, titles, and contact information of individuals who participated in the decision to seize and review the Accused's attorney-client privileged information in October 2011.

**Captain Welsh has testified that Admiral Woods ordered a baseline review of materials in the detainee's cell. Who participated in that decision is not relevant, as Admiral Woods was the Commander and it is the review itself, and not the decisions that lead to that review, that is at issue. The Office of the Chief Prosecutor was not aware of the baseline review, nor was it consulted prior to the base-line review taking place.**

- c. Names, titles, and contact information of individuals who participated in the execution of the seizure and review of the Accused's attorney-client privileged information in October 2011.

**Captain Welsh participated and supervised the baseline review and has previously testified about this subject**



**matter in U.S. v al Nashiri. CAPT Welsh is also available to be interviewed by the Defense regarding this subject matter.**

- d. Plans, written procedures, and any descriptions of how the October 2011 seizure and review of the Accused's attorney-client privileged information was intended to be executed.

**Denied. What is relevant is how the baseline review was actually conducted, not how it was intended to be executed.**

- e. Descriptions, after-action reports, and/or other documentation regarding the actual seizure and review of the Accused's attorney-client privileged information.

**Denied as not relevant. Captain Welsh is in possession of the information that was seized from the five accused. This information is properly wrapped and is in a secure location. Defense may view this information if they so choose.**

- f. Location(s) where the October 2011 seizure and review of the Accused's attorney-client privileged information was executed.

**The Baseline Review was conducted at the accused's confinement facility.**

Respectfully,

//s//

Clay Trivett  
Deputy Trial Counsel

# ATTACHMENT I



UNCLASSIFIED//FOR PUBLIC RELEASE

**DEPARTMENT OF DEFENSE**

JOINT TASK FORCE GUANTANAMO

JOINT DETENTION GROUP

U.S. NAVAL BASE, GUANTANAMO BAY, CUBA

APO AE 09360

JTF-GTMO-CJDG

4 February 2013

MEMORANDUM FOR ALL PERSONNEL ASSIGNED TO THE JOINT DETENTION GROUP(JDG)

SUBJECT: Monitoring of Attorney-Client Meetings

1. Purpose. To provide Commander's guidance on the monitoring of meetings between detainees and attorneys. This memorandum is a reiteration of the guidance put out by me shortly after assuming command on 7 June 2012, and as re-emphasized on 1 February 2013.
2. Background. As the Commander, Joint Detention Group, I am responsible to Commander, Joint Task Force Guantanamo for the safety and security of detainees, guard force personnel, contractors and others inside the JTF-GTMO area of operations. Monitoring of meetings between detainees and their attorneys via video camera is done for this purpose. Consistent with my prior orders, no audio monitoring of meetings between detainees and their Habeas and/or Military Commissions Defense Counsel or other personnel assigned to these legal teams is authorized.
3. Instructions.
  - a. Video cameras shall remain on their widest zoom setting.
  - b. Guard force personnel are authorized to zoom in the camera when a potential force protection or security concern arises. (For example, a detainee's hands are out of view and guards cannot readily assess whether the detainee is engaged in act of harm to self or others or attempt to escape, or there is an apparent act of harm to self or others, or escape.
  - c. Guard force personnel may zoom for the minimum time necessary to determine whether the detainee is taking actions to engage in harm to self or others, or is attempting to escape. If guard force personnel cannot immediately assess the actions of the detainee, they shall dispatch guards to the meeting room to visually assess the situation.
  - d. Any use of the zoom feature of a video camera is to be logged into the appropriate logs and a voice report made to the Joint Operations Center and the Camp Officer in Charge.
  - e. Guard force personnel shall not zoom the camera on any documents. These documents are presumed to be protected under the attorney-client and attorney workproduct privileges.
  - f. Audio monitoring of meetings between detainees and their attorneys is not authorized.
4. I am the POC; 2, 3 [REDACTED] or DSN 2 [REDACTED] or COM 2 [REDACTED].

  
JOHN V. BOGDAN  
COL, MP  
Commanding