United States of America v. Khalid Shaikh Mohammad, Walid Muhammad Salih Mubarak bin 'Attash, Ramzi bin al Shaibah, Ali Abdul Aziz Ali, Mustafa Ahmed Adam al Hawsawi	AE155 (Mohammad, ~~Bin~~ bin al Shaibah, al Baluchi, al Hawsawi) Emergency Defense Motion to Abate for Information Technology Compromise, or to Continue Hearing

1. This motion is being filed within the timeframes established by the military judge.

2. The military commission should abate the proceedings until ① defense information technology systems are secure against violation of attorney-client, attorney work product, and joint defense privileges; and ② the order prohibiting use of information technology systems for privileged material is lifted.

3. Following prosecution disclosures that defense information technology systems had been compromised, Colonel Karen Mayberry, Chief Defense Counsel, sought to investigate the scope of and solutions to third-party access to defense privileged material. Based on her investigation, COL Mayberry ordered the defense not to transmit or save privileged or confidential information over DOD networks. This order has brought about a virtual work stoppage that prohibits a meaningful exercise of the defense function, and requires abatement of the proceedings.

4. The defense bears the burden of proof.

5. Facts:

a. On 28 March 2013, the prosecution filed a motion in al Qosi v. United States, which revealed a compromise of internal defense email communication. (Attachment B.) The motion revealed that two email searches, and possibly a third, resulted in the production of internal defense emails to the prosecution. The searched emails included the account of CDR Suzanne Lachelier, who at various times was associated with the defense of both Mr. bin al Shaibah and Mr. al Hawsawi. See, e.g., AE 053 Government's Motion and Memorandum for the Commission to Inquire into a Potential Conflict of Representation.

b. Per her statutory and regulatory duties, Col. Karen Mayberry conducted an investigation into the scope of and solutions to the information technology vulnerabilities.

c. Following her investigation, Col. Mayberry issued a directive on 10 April 2013 at 1954 hours. The directive prohibits all OCDC personnel from transmitting or saving ~~data~~ privileged or confidential data over DOD networks. (Attachment C.)

d. The order of 10 April 2013 has brought about a virtual work stoppage among OCDC personnel. For example, until the temporary file/autosave mechanisms are understood, no document is being drafted on any DOD system. The affected systems include every OCDC computer except the P2P system.

6. The military ~~proce~~ commissions proceedings cannot go forward until the issues surrounding the compromise of defense data and communications are resolved. The data compromise, and its resulting order, eviscerate the defense function required by the Sixth Amendment and Military Commissions Act of 2009.

Initially, counsel have an ethical duty to protect confidential and privileged information from disclosure. See, e.g., ABA Model R. Prof. Resp. 1.6(a). When the government intrudes into the attorney-client ~~privilege~~ relationship by accessing privileged information, the Sixth Amendment is violated. See, e.g., United States v. Haynes, 216 F.3d 789, 797 (9th Cir. 2000). Here, credible evidence has established a compromise of defense internal communications; the defense must take steps to defend against such intrusion.

Pursuant to her duties to supervise defense counsel, Col. Karen Mayberry has issued an order prohibiting storage of ~~p~~rivileged information on government systems. This order essentially brings trial preparation to a stop. The only data which may be transmitted or stored is non-privileged and non-confidential; otherwise, data must be on a stand-alone computer or drive or on paper. It is impossible for counsel to provide effective assistance or fulfill the learned counsel role under these circumstances. Accordingly, the Military commission should abate the proceedings, or, in the alternative, cancel the April hearing and continue the case until June to allow Col. Mayberry to address the problems and seek solutions.

7. Oral argument is waived, to the extent the military commission elects to address this motion ~~pre~~ without a hearing. If a hearing is held, counsel requests oral argument.

8. Witnesses: Counsel is investigating to determine which witnesses will be necessary.

9. At 1051 hours on 11 April 2013, counsel requested the position of the prosecution on this motion. Given its emergency nature, counsel will file without waiting further for a response.

10. Additional information: None.

11. Attachments:
    A. Certificate of service
    B. Motion for Enlargement of Time to Produce Additional Documents Responsive to the Court's February 26, 2013 Order, al Qosi v. United States, dated 28 March 2013
    C. Directive regarding OCDC personnel use of the WHS Enterprise Network for Confidential or Privileged Material, dated 10 April 2013

Respectfully submitted,

James G. Connell, III
Counsel for Mr. al Baluchi

Sterling R. Thomas

James G. Connell, III on behalf of David Z. Nevin
Counsel for Mr. Mohammad

James P. Harrington
Counsel for Mr. Bin al Shibh

Kevin B. Bogucki
LCDR JAGC USN
Counsel for Mr. Bin al Shibh

Walter Ruiz JR
Counsel for Mr. al Hawsawi

Certificate of Service

I certify ~~on~~ that on the 11th day of April, 2013, I electronically filed the foregoing document with the Clerk of the Court and served it on all counsel of record by email.

Counsel for Mr. al Baluchi

IBRAHIM AHMED MAHMOUD AL QOSI,	)	IN THE UNITED STATES COURT OF MILITARY COMMISSION REVIEW
Petitioner,	)	**MOTION FOR ENLARGEMENT OF TIME TO PRODUCE ADDITIONAL DOCUMENTS RESPONSIVE TO THE COURT'S FEBRUARY 26, 2013 ORDER**
v.	)	
	)	U.S.C.M.C.R. Case No. 13-001
UNITED STATES,	)	
Respondent.	)	

TO THE HONORABLE, THE JUDGES OF THE COURT OF MILITARY COMMISSION REVIEW

Pursuant to U.S.C.M.C.R. Rule 21, Respondent United States respectfully requests this honorable Court to enlarge the time to supplement its production of documents responsive to the Court's February 26, 2013 Order until Monday, April 29, 2013. Respondent will, of course, provide this honorable Court the additional responsive documents as soon as they are available.

BACKGROUND

On February 12, 2013, U.S.C.M.C.R. ordered Respondent to produce within seven days "any communications, or records thereof, between the Government, and the Petitioner or any member of the Petitioner's trial defense team or Appellate Defense Counsel regarding waiver or withdrawal of appellate review, not otherwise included in the authenticated Record of Trial . . . ." Order ¶ 3, Feb. 12, 2013. It also ordered Respondent to produce "any document or other record in the possession of the Government indicating excusal, change or withdrawal of Defense Counsel during the period August 10, 2010 through February 12, 2013." Order ¶ 4, Feb. 12, 2013. Although the Court did not specify a deadline for producing the documents identified in Paragraph 4 of the Order, Respondent assumed the Court intended Respondent to produce these documents also within seven days.

On February 19, 2013, Respondent produced documents responsive to Paragraph 3 of the Order and requested that the Court enlarge the time to produce additional documents responsive

to that Order. On February 25, 2013, Petitioner opposed the enlargement request. The next day, the Court granted an enlargement of time until March 21, 2013. The Court also modified Paragraph 3 of its Order, instructing Respondent to produce

> copies of any communications, or records thereof, between the Government, and the Petitioner or any member of the Petitioner's trial defense team or Appellate Defense Counsel regarding waiver or withdrawal of appellate review, not otherwise included in the authenticated Record of Trial, ***and occurring during the period August 10, 2010 through February 12, 2013***.

Order ¶ 1, Feb. 26, 2013 (emphasis in original).

On March 21, 2013, Respondent moved for an enlargement of time to produce additional documents responsive to the Court's February 26, 2013 Order. Petitioner opposed the enlargement request. On March 26, 2013, the Court granted the Motion. For the reasons explained below, Respondent must again ask the Court to enlarge the time to supplement the production of documents responsive to the Court's February 26, 2013 Order. An enlargement of time is necessary because searching for responsive communications—while properly protecting Petitioner's and Respondent's attorney-client privileged communications—has proven complex. Despite counsel for Respondent's diligent and sincere efforts to comply with the Court's orders, the Government requires more time in order to continue to diligently produce responsive communications.

On March 28, 2013, counsel for Respondent asked Captain McCormick if she would consent to an enlargement. As of the filing of this motion, Respondent had not received Captain McCormick's response.

FACTS

On February 15, 2013, counsel for Respondent contacted Mr. [redacted], Information Technology Manager in the Office of Military Commissions - Convening Authority, informing him that the Court had ordered Respondent to produce, *inter alia* "'any communications, or records thereof, between the Government, and [Ibrahim Ahmed Mahmoud Al Qosi] or any member of [his] trial defense team or Appellate Defense Counsel regarding waiver or withdrawal

of appellate review . . . .'" Email from Edward White, CAPT, JAGC, USN, Appellate Counsel for Respondent, to [redacted], Information Technology Manager, OMC-CA (Feb. 15, 2013, 13:54 EST) (Attachment A at 4). Counsel for Respondent asked Mr. [redacted] to facilitate the technical steps necessary to obtain responsive communications and to provide a timeline for obtaining them. Mr. [redacted] replied that "OMC Security" must request the communications from OSD Records Management, because the search would require access to the archived mailboxes of individuals who no longer work at the Office of the Chief Prosecutor. Email from [redacted] to Edward White (Feb. 15, 2013, 15:46 EST) (Attachment A at 3-4). Mr. [redacted] copied OMC Convening Authority Security staff on his reply. (OMC Security was initially a component of OMC, but was later transferred to the Washington Headquarters Service ("WHS")).

That same day, Ms. [redacted] Security Specialist at OMC, replied to counsel for Respondent, requesting a copy of the Court Order. Ms. [redacted] stated that the Court Order "must be processed as a FOIA [sic]" by "a special team at the [Office of the Secretary of Defense, Chief Information Office]." She estimated, "They can possible [sic] get it to you by next week." Email from [redacted], Security Specialist at OMC, to Edward White (Feb. 15, 2013, 15:57 EST) (Attachment A at 3). Four minutes later, counsel for Respondent sent Ms. [redacted] the Court order and instructed her not to process the Court order as a Freedom of Information Act Request. Email from Edward White to [redacted] (Feb. 15, 2013, 16:01 EST) (Attachment A at 2). Counsel also requested "a solid projected completion date and an idea of what's involved" in case counsel needed to request additional time from the Court. *Id.*

Despite counsel's repeated attempts to contact Ms. [redacted] by phone and email, Ms. [redacted] did not respond to counsel's email until four days later, February 19, 2013—the deadline for producing responsive communications. Ms. [redacted] recommended that counsel "request 45 working business days extension (excluding holidays and weekends)." Email from [redacted] to Edward White (Feb. 19, 2013, 16:05 EST) (Attachment A at 1). Relying on Ms. [redacted] assessment of the additional time that would be required to complete the search and review, on February 19, 2013, counsel requested an extension of 45 business days to

complete the search for responsive communications and produce those communications to the Court.

In her February 19, 2013, email recommending a 45-day extension, Ms. [redacted] also indicated that she contacted the defense "to gather the email and files." *Id.* The following day, it was brought to counsel's attention that Ms. [redacted] indeed had contacted a member of the Office of the Chief Defense Counsel requesting communications identified in the Court Order. Email from Edward White to [redacted] (Feb. 20, 2013, 14:36 EST) (Attachment B at 1-2). Counsel immediately emailed Ms. [redacted]

> "There is no need to search defense email accounts—and we don't want you to do that. To comply with the Court's order, it should be sufficient to search the archived emails of [certain prosecution counsel]. Those are the people within [the Office of the Chief Prosecutor] that would potentially have responsive materials in their archived emails, and there shouldn't be anything responsive in defense emails that wouldn't also be in one of those email accounts.
>
> So, please have the [Chief Information Office] people limit their search to those three individuals named in the above paragraph."

Id.

For reasons unknown to counsel for Respondent, the people executing the search within the Enterprise Information Technology Services Directorate ("EITSD") of WHS were not made aware of counsel's instructions. [redacted] Decl., Mar. 28, 2013 (Attachment C). An Investigative Search Request ("ISR") to EITSD completed by Ms. [redacted] nd dated February 21, 2013—the day after counsel's limiting instruction—did not limit the search to the three named prosecutors. EITSD Requirements Document (Feb. 21, 2013, and updated Feb. 27, 2013) (Attachment D). In fact, it completely omitted one of the named prosecutors from the search entirely. *Id.* Ms. [redacted] named herself, two prosecution paralegals, and two defense paralegals as the persons who could review the search results from the search technicians to ensure that the search results did not include any attorney-client privileged communications. *See* Email from [redacted] to Danielle Tarin (Mar. 25, 2013, 8:06 EST) (Attachment E). EITSD Requirements Document (Feb. 21, 2013, and updated Feb. 27, 2013) (Attachment D). Counsel for Respondent was unaware of this mis-scoped ISR until March 25, as Ms. [redacted]

did not consult with counsel regarding the ISR and, in fact, insisted that counsel route all search instructions through her instead of directly contacting the technicians conducting the search.

The week of March 11, 2013, Ms. Woodard indicated to counsel that the search would likely be completed before the Court's then-established deadline of March 21. Counsel attempted to contact Ms. [redacted] on both March 18 and March 19 for a status update, but Ms. [redacted] did not respond. Instead, Ms. [redacted] contacted a paralegal in the Office of the Chief Prosecutor on March 19 and informed the paralegal that the search results would not be available until at least March 21. On March 20, counsel traveled to Ms. [redacted] office—more than a half hour drive away—in an attempt to speak with her, but Ms. [redacted] was not there. Email from Edward White to [redacted] (Mar. 20, 2013, 13:18 EST) (Attachment F at 2). Counsel emailed Ms. [redacted] asking her to direct counsel to someone who could help explain to the Court why Respondent would need another extension. *Id.* Several hours later, Ms. [redacted] informed counsel that [redacted] was "leading search." Email from [redacted] to Edward White (Mar. 20, 2013, 17:12 EST) (Attachment F at 1).

That evening, counsel determined that [redacted] was [redacted] an ISR Specialist at EITSD within WHS. Counsel contacted him that night for a conference call the next morning. The next morning, Mr. [redacted] informed counsel that EITSD's limited resources prevented EITSD from completing the search before March 21. *See* [redacted] Decl. ¶¶ 2-4, Mar. 21, 2013 (Attachment G). Later that day, he informed counsel that, barring any unforeseen events, the search would not be complete until March 22. He assured counsel that EITSD had made "every effort possible to provide counsel for Respondent with the ISR results as soon as it can." [redacted] Decl. ¶ 4, Mar. 21, 2013.

On March 21 and March 22, EITSD provided Office of the Chief Prosecutor ("OCP") counsel with a number of Microsoft Outlook PST files containing the results of their search pursuant to the Court's order. Late the afternoon of Friday, March 22, one counsel for Respondent opened the first PST folder, and then opened the first four or five emails contained therein. All but the last of those emails were between a member of Mr. al Qosi's trial defense

team and a member of the prosecution team. The final email he opened was from a member of the trial defense team and was addressed solely to other members of the al Qosi defense team. The salutation was "team," or some similar word. Counsel read no further and immediately closed the email and the folder. He then immediately notified his co-counsel and paralegal that there appeared to be privileged communications mixed into the search results counsel had been provided, and that his co-counsel and paralegal should not look at any of the material provided by EITSD. Since this instruction, counsel for Respondent and their paralegal have not reviewed any of the material provided to them by EITSD. Although it appears that at least one email exchanged among defense team members was provided to counsel for Respondent by EITSD as part of the search results, no one OCP has read the content of that email message or seen any privileged defense information. (On March 26, counsel for Respondent notified CAPT Mary McCormick and Mr. al Qosi's trial defense counsel of the inadvertent disclosure.)

Despite counsel's clear prior instructions to Ms. [redacted] that no defense email accounts should be searched, and that the search should be limited to the mailboxes of the three named prosecutors, EITSD had search each of six email boxes, two prosecution mailboxes and four defense counsel mailboxes, for any communications from that person to any of the others. *See* [redacted] Decl. ¶¶ 2-4, Mar. 21, 2013 (Attachment G).

On Friday, March 22, counsel for Respondent attempted to contacted Mr. [redacted], but he had already left for the weekend. The following Monday morning, March 25, counsel spoke directly with Mr. [redacted] who explained that Ms. [redacted] had not limited the search in accordance with counsel's instructions and that the search would need to be entirely redone. [redacted] Decl., Mar. 28, 2013 (Attachment C). Counsel emphasized to Mr. [redacted] that the search should examine only email accounts of three named prosecution team members, and must not include any emails solely between or among defense team members.

On March 25, by email, counsel asked Mr. [redacted] to confirm that EITSD was searching for responsive communications only in the prosecution team members' email accounts. Email

from Danielle Tarin to [redacted] (Mar. 25, 2013, 18:26 EST) (Attachment H at 1-2). Mr. [redacted] replied that counsel need not

> worry about seeing any emails with privileged or work product information in the results.
>
> Remember the computer only does what you tell it, it is objective in its search. The search will be any emails FROM or TO the prosecution attorneys TO the defense or FROM the defense attorneys. Again no responsive records will [sic] between the defense attorneys themselves will end up in the results. Once the technician inputs the search parameters into search engine it will only provide responsive results based upon those requirements.
>
> The search does not have to be executed within the mailboxes of the defense attorneys to provide the responsive results you are seeking.

Email from [redacted] to Danielle Tarin (Mar. 26, 2013, 6:31 EST) (Attachment H at 1).

EITSD completed this new search on March 27. Out of an abundance of caution, counsel directed Mr. [redacted] to deposit all search results with government attorneys outside the Office of the Chief Prosecutor (the "Privilege Review Team") so that those attorneys could review the search results to ensure they included no privileged communications and, in particular, no communications solely among Mr. al Qosi's defense counsel. [redacted] Decl., Mar. 28, 2013 (Attachment C). Soon after beginning the review, a privilege-review attorney discovered an email solely among defense counsel. [redacted] Decl., Mar. 28, 2013 (Attachment C). The privilege-review attorneys immediately ceased their review.

Counsel for Respondent then worked with the EITSD search technicians to develop a new search that, again, would yield documents responsive to the Court's orders but omit privileged communications between and among defense team members alone. [redacted] Decl., Mar. 28, 2013 (Attachment C). EITSD began the new search that night but still encountered "unforeseen technical issues." Email from [redacted], EITSD, to Michael O'Sullivan, Col, USAF, Deputy Chief Prosecutor, Office of the Chief Prosecutor (Mar. 27, 2013, 19:09 EST) (Attachment I).

No one in EITSD is assigned full-time to work on ISRs. Rather, a handful of technicians conduct these investigative searches in addition to their other assigned duties, which include

maintaining the operation and security of the OSD information networks, among numerous other IT functions. Only a handful of technicians within EITSD have the knowledge and expertise to operate the search software used to conduct the search in this case. The single most experienced and knowledgeable technician has been out of the country on leave since after completion of the first, mis-scoped search and therefore has been unavailable to assist in constructing and running the subsequent searches. Only technicians less skilled in the use of the software search tool are available. One EITSD technician remained at work for four hours beyond his normal duty hours on March 27 to work on this search, and needed to spend a considerable amount of time speaking with technical experts at the software vendor to obtain assistance in crafting and executing the search.

EITSD completed this third search on Thursday, March 28, but the search has inexplicably generated over 540,000 emails, which EITSD as of the time of writing has not yet provided to the Privilege Review Team that is standing by to screen the search results. Upon information and belief, even though the number of responsive documents, if any, will likely be quite small, it will take a significant amount of time for the Privilege Review Team to review the 540,000 emails for privilege, for counsel for the Government to then narrow the 540,000 emails using additional search terms to appropriately narrow the results, and then conduct a page-by-page review, in order to ensure that the Government fully complies with the Court's Order.

ARGUMENT

Respondent has taken reasonable steps since the Court's original production order to identify and produce the communications responsive to the Court's order. Initially, garbled communication between counsel for Respondent and the technicians actually executing the electronic search produced flawed results. Once that problem was identified and resolved, counsel for Respondent engaged in direct communication with the personnel at EITSD working on this search request in an effort to better focus the search for responsive documents. Throughout these second and third iterations, however, Respondent has been disadvantaged by

the absence of the single most experienced and knowledgeable technician, as well as by the competing mission-critical demands on the time of the part-time ISR technicians who are available. Further, as attested to by the declaration of Mr. [redacted] and by the difficulties recounted above, crafting a search that simultaneously protects privileged defense communications, captures all responsive communications, and yet does not produce overbroad and burdensome results is a challenging and time-consuming task.

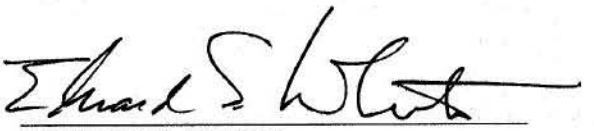
As explained above, the most recent search—which was limited to the mailboxes of three prosecutors, and looked only for emails between that prosecutor and at least one of the al Qosi trial defense counsel, using an appropriate set of narrowing search terms, still produced over 540,000 email hits, which seems impossibly large. Given the prior history, counsel for Respondent has thought it prudent to have the search results screened for privileged material before examining the search results themselves.

Once the privilege review is completed, counsel for Respondent will need a substantial period of time to identify why the EITSD search has returned such a large number of emails, and develop a strategy to narrow those results with additional reasonable search terms, and then conduct a page-by-page review of the winnowed emails for responsive documents.

Counsel for Respondent has worked diligently to produce responsive communications. Nonetheless, for all the reasons detailed above, retrieving those communications while properly protecting privileged information has proved more challenging than anticipated. Given the difficulties encountered so far, and to ensure that counsel continue to properly protect privileged communications while complying with the Court's Orders, Respondent respectfully requests that the Court enlarge the time to produce additional documents responsive to the Court's February 26, 2013 Order until Monday, April 29, 2013.

Respectfully submitted,

MARK S. MARTINS
Brigadier General, U.S. Army
Chief Prosecutor



EDWARD S. WHITE
Captain, JAGC, U.S. Navy
Appellate Counsel

DANIELLE S. TARIN
Appellate Counsel

Counsel for Respondent

Office of the Chief Prosecutor
Office of Military Commissions
1610 Defense Pentagon
Washington, D.C. 20301-1610
[redacted]

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent by electronic mail to CAPT Mary McCormick, detailed appellate defense counsel, on March 28, 2013.

EDWARD S. WHITE
Captain, JAGC, U.S. Navy
Appellate Counsel for Respondent

Office of Military Commissions
1610 Defense Pentagon
Washington, D.C. 20301-1610
[redacted]

Attachment A

Tarin, Danielle S CIV OSD OMC Prosecution

From: [redacted] Ms OSD OMC Convening Authority
Sent: Tuesday, February 19, 2013 4:05 PM
To: White, Edward S CAPT OSD OMC Prosecution
Cc: Tarin, Danielle S CIV OSD OMC Prosecution; [redacted] CTR WHS-EITSD; [redacted] CTR WHS-EITSD; [redacted] CTR WHS-EITSD; [redacted] CTR OSD OMC Convening Authority; [redacted] Mr OSD OMC Convening Authority; [redacted] CIV OSD OMC Convening Authority; [redacted] Mr OSD OMC Convening Authority; MLA dd - OMC Convening Authority Security; Breslin, Michael Mr OSD OMC Convening Authority; [redacted] LN2 OSD OMC Prosecution; [redacted] LN1 OSD OMC Prosecution; [redacted] Mr OSD OMC Convening Authority
Subject: UPDATE: RE: URGENT - Court Order ICO al Qosi v. United States [redacted]
Signed By: [redacted]

~~FOUO~~

Good Afternoon CAPT White,
I've spoken with Ms. Danielle Tarin and I explained that I spoke with the records' manager for Defense, Ms. Clemencia Jemison and I sent an email to P.O. [redacted] (Prosecution records manager). These individuals I've requested to gather the email and files. Once the emails are gathered they must be un-vaulted which a request to the helpdesk to have this done. The emails and files they don't have I've already requested to the OSD CIO helpdesk for immediate assistance (1 day turnaround to tell me if they have the emails and files available). Each individuals' email/files will have to be gone through individually by the records' manager and if they can't go through them the CIO office will have to have their team go through them individually. The records if they are old the request may have to be sent to the archives to retrieve what you are requesting.
I explained to Ms. Tarin I would request 45 working business days extension (excluding holidays and weekends) because un-vaulting can take a very long time and some emails are difficult to open, and some may not open at all.

If you need further assistance just let us know.

Sincerely,

[redacted]
Security Specialist
OSD/OMC
[redacted]

Privacy Act of 1974 as Amended applies - this email may contain information that is protected IAW DoD5400.11R and is For Official Use Only (FOUO). Caution: Information contained in this message may be protected by the attorney/client privilege, attorney work.

-----Original Message-----
From: White, Edward S CAPT OSD OMC Prosecution
Sent: Tuesday, February 19, 2013 1:35 PM
To: [redacted] Ms OSD OMC Convening Authority
Cc: Tarin, Danielle S CIV OSD OMC Prosecution; [redacted] CTR WHS-EITSD; [redacted] CTR WHS-EITSD; [redacted] CTR WHS-EITSD; [redacted] CTR OSD OMC Convening Authority; [redacted] Mr OSD OMC Convening Authority; [redacted] CIV OSD OMC Convening Authority; [redacted] Mr OSD OMC Convening Authority; MLA dd - OMC Convening Authority Security; Breslin, Michael Mr OSD OMC Convening Authority
Subject: RE: URGENT - Court Order ICO al Qosi v. United States
Importance: High

[redacted]

We're getting close to the point at which we need to file something with CMCR in the Qosi matter. What's the latest news (especially with respect to Q. 3 below)?

Thanks. v/r, ESW

-----Original Message-----
From: White, Edward S CAPT OSD OMC Prosecution
Sent: Friday, February 15, 2013 4:01 PM
To: [redacted] Ms OSD OMC Convening Authority
Cc: Tarin, Danielle S CIV OSD OMC Prosecution; [redacted] CTR WHS-EITSD; [redacted] CTR WHS-EITSD; [redacted] CTR WHS-EITSD; [redacted] CTR OSD OMC Convening Authority; [redacted] Mr OSD OMC Convening Authority; [redacted] CIV OSD OMC Convening Authority; [redacted] Mr OSD OMC Convening Authority; MLA dd - OMC Convening Authority Security
Subject: RE: URGENT - Court Order ICO al Qosi v. United States

[redacted]

1. Thanks for the quick response.

2. Attached is a copy of the Order from CMCR.

3. It should NOT be processed as a FOIA request -- it is not a FOIA request, but a court order. If that's a sticking point, let me know and we can discuss.

4. Understand you might not be able to get us a substantive answer by COB Tuesday, but if we could at least get a solid projected completion date and an idea of what's involved, we can seek extra time from the Court.

v/r, ESW

-----Original Message-----
From: [redacted] Ms OSD OMC Convening Authority

Sent: Friday, February 15, 2013 3:57 PM
To: White, Edward S CAPT OSD OMC Prosecution
Cc: Tarin, Danielle S CIV OSD OMC Prosecution; [redacted] CTR WHS-EITSD; [redacted] CTR WHS-EITSD; [redacted] CTR WHS-EITSD; [redacted] CTR OSD OMC Convening Authority; [redacted] Mr OSD OMC Convening Authority; [redacted] CIV OSD OMC Convening Authority; [redacted] Mr OSD OMC Convening Authority; MLA dd - OMC Convening Authority Security
Subject: RE: URGENT - Court Order ICO al Qosi v. United States
Importance: High

~~UNCLASS//FOUO~~

Good Afternoon CAPT White,
Before this request is processed I must have a copy of the court order and it must be processed as a FOIA. I can asked for an expedite, but I cannot guarantee it will be completed by Tuesday, 19 January 2013 because this is done by a special team at the OSD CIO. They can possible get it to you next week.

I will contact the records managers for OMC-Defense and Prosecution in regards to the emails to see if they can assist quicker. I can't do anything without the court order, I must have it as soon as possible.
Sincerely,

[redacted]
Security Specialist
OSD/OMC
[redacted]

Privacy Act of 1974 as Amended applies - this email may contain information that is protected IAW DoD5400.11R and is For Official Use Only (FOUO).
Caution: Information contained in this message may be protected by the attorney/client privilege, attorney work.

-----Original Message-----
From: [redacted] Mr OSD OMC Convening Authority
Sent: Friday, February 15, 2013 3:46 PM
To: White, Edward S CAPT OSD OMC Prosecution; MLA dd - OMC Convening Authority Security
Cc: Tarin, Danielle S CIV OSD OMC Prosecution; [redacted] CTR WHS-EITSD; [redacted] CTR WHS-EITSD; [redacted] CTR WHS-EITSD; [redacted] CTR OSD OMC Convening Authority; [redacted] Mr OSD OMC Convening Authority; [redacted] CIV OSD OMC Convening Authority
Subject: RE: URGENT - Court Order ICO al Qosi v. United States
Importance: High

CAPT White,

This request will have to be processed by OMC Security. OMC Security will have to request the emails from OSD Records Management. The details of the process and timeline can be provided by OMC Security.

Thanks,

[redacted]

-----Original Message-----
From: White, Edward S CAPT OSD OMC Prosecution
Sent: Friday, February 15, 2013 1:54 PM
To: [redacted] Mr OSD OMC Convening Authority
Cc: Tarin, Danielle S CIV OSD OMC Prosecution; [redacted] CTR WHS-EITSD; [redacted] CTR WHS-EITSD; [redacted] CTR WHS-EITSD; [redacted] CTR OSD OMC Convening Authority
Subject: URGENT - Court Order ICO al Qosi v. United States
Importance: High

Mr. [redacted]

The Office of the Chief Prosecutor received an Order from the U.S. Court of Military Commission Review requiring us to produce-by COB Tuesday, 19 February-"any communications, or records thereof, between the Government, and [Ibrahim Ahmed Mahmoud Al Qosi] or any member of [his] trial defense team or Appellate Defense Counsel regarding waiver or withdrawal of appellate review . . . ."

To respond to this Order, I need email communications from July 2009 through August 2010 between any one of these prosecutors-CDR Dirk Padgett (OMC-P), Seamus Quinn (departed OMC-P), and Ralph Paradiso (departed OMC-P)-and any one of these defense counsel-MAJ Todd Pierce, CDR Susan Lachelier, Larry Martin (lhm@foleyhoag.com), LCDR Travis Owens, and Paul Reichler (preichle@foleyhoag.com).

Would you please facilitate technical steps necessary to obtain these email communications and provide a timeline for obtaining them? Although the Court has ordered us to produce the communications by COB Tuesday (19 February), I realize obtaining these communications by that date might not be possible. If it is not, by what date do you believe we can obtain them?

Thank you.

Ed White

EDWARD S. WHITE
CAPT, JAGC, USN
Deputy Chief Prosecutor (Motions & Appeals)
Office of the Chief Prosecutor of Military Commissions
1610 Defense Pentagon
Washington, D.C. 20301-1610

[redacted]

[redacted]

Attachment B

Tarin, Danielle S CIV OSD OMC Prosecution

From: [redacted] Ms OSD OMC Convening Authority
Sent: Wednesday, February 20, 2013 3:54 PM
To: White, Edward S CAPT OSD OMC Prosecution
Cc: Breslin, Michael Mr OSD OMC Convening Authority; Tarin, Danielle S CIV OSD OMC Prosecution
Subject: RE: Request for Emails ~~(U)~~
Signed By: [redacted]

~~FOUO~~

Good Afternoon Sir,
The limit to the CIO was to send the emails that PO [redacted] needs. The Defense already have the emails except for Lachelier so I was inquiring to them to provide the emails to make the process quicker and easier for you.

I will check with PO [redacted] to see if she has received confirmation from the CIO when will they send her the emails that she needs to provide to you from OMC-P staff on the email that was sent to me.

If you need further assistance just let me know.

Sincerely,

[redacted]
Security Specialist
OSD/OMC
[redacted]

Privacy Act of 1974 as Amended applies - this email may contain information that is protected IAW DoD5400.11R and is For Official Use Only (FOUO). Caution: Information contained in this message may be protected by the attorney/client privilege, attorney work.

-----Original Message-----
From: White, Edward S CAPT OSD OMC Prosecution
Sent: Wednesday, February 20, 2013 2:36 PM
To: [redacted] Ms OSD OMC Convening Authority
Cc: Breslin, Michael Mr OSD OMC Convening Authority; Tarin, Danielle S CIV OSD OMC Prosecution
Subject: RE: Request for Emails ~~(U)~~

[redacted]

Mike Breslin brought to my attention earlier today that Bryan Broyles of OCDC had declined to assist in your effort to search OCDC emails, which you had sought to do in response to our request to search archived email accounts in response to the CMCR order in the al Qosi matter.

There is no need to search defense email accounts -- and we don't want you to do that. To comply with the Court's order, it should be sufficient to search the archived emails of Capt Seamus Quinn, USMC, LtCol Ralph Paradiso, USAF, and CDR Dirk Padgett, JAGC, USN. Those are the people within OCP that would potentially have responsive materials in their archived emails, and there shouldn't be anything responsive in defense emails that wouldn't also be in one of those email accounts.

So, please have the CIO people limit their search to those three individuals named in the above paragraph. If you have any questions or concerns going forward, please feel free to call or email Danielle Tarin in my office, as she has the lead on this matter for us.

Thanks.

v/r, Ed White

EDWARD S. WHITE
CAPT, JAGC, USN
Deputy Chief Prosecutor (Motions & Appeals)
Office of the Chief Prosecutor of Military Commissions
1610 Defense Pentagon
Washington, D.C. 20301-1610

[redacted]

-----Original Message-----
From: Breslin, Michael Mr OSD OMC Convening Authority
Sent: Wednesday, February 20, 2013 1:40 PM
To: Tarin, Danielle S CIV OSD OMC Prosecution; White, Edward S CAPT OSD OMC Prosecution
Subject: RE: Request for Emails [redacted]

Should I pass that along to Ms [redacted]

mb

-----Original Message-----
From: Tarin, Danielle S CIV OSD OMC Prosecution
Sent: Wednesday, February 20, 2013 11:07 AM
To: White, Edward S CAPT OSD OMC Prosecution

Cc: Breslin, Michael Mr OSD OMC Convening Authority
Subject: RE: Request for Emails ~~(U)~~

No, I do not think we need to search the archived communications of anyone other than Padgett, Quinn, and Paradiso.

Best,
Danielle

-----Original Message-----
From: White, Edward S CAPT OSD OMC Prosecution
Sent: Wednesday, February 20, 2013 10:58 AM
To: Breslin, Michael Mr OSD OMC Convening Authority
Cc: Tarin, Danielle S CIV OSD OMC Prosecution
Subject: RE: Request for Emails ~~(U)~~

Mike,

I think Bryan is correct that we don't need to be searching within the Defense emails. The order is to the government, and concerns documents/communications concerning waiver or appellate review and withdrawal/excusal of counsel from the case between the government and the defense. We should find any responsive documents by searching our side of the comms.

Danielle - weigh in here, but I'm thinking it is probably sufficient to search the archived comms of Padgett, Quinn and Paradiso. Danielle - do you think we need to search the communications of anyone else?

v/r, ESW

-----Original Message-----
From: Breslin, Michael Mr OSD OMC Convening Authority
Sent: Wednesday, February 20, 2013 10:31 AM
To: White, Edward S CAPT OSD OMC Prosecution
Subject: FW: Request for Emails ~~(U)~~

Ed-

Ms [redacted] is attempting to get the e-mail you requested. Apparently, some of the accounts for defense counsel now departed are still with the defense records managers at OCDC. Ms Woodard asked them if they would search. Mr Broyles replied (below) that the court's order is directed to the government, not the defense.

Not sure if OSD CIO can search the defense e-mail, or whether you want them to--

How would you like to proceed?

Michael J. Breslin
Deputy Legal Advisor

Office of Military Commissions

[redacted]

CAUTION: Information contained in this message may be protected by the attorney-client privilege, attorney work-product privilege, deliberative process or other privileges. Do not distribute further without approval from the Office of the Convening Authority for Military Commissions.

-----Original Message-----
From: [redacted] Ms OSD OMC Convening Authority
Sent: Wednesday, February 20, 2013 10:22 AM
To: Breslin, Michael Mr OSD OMC Convening Authority
Subject: FW: Request for Emails (U)

[redacted]
Mr. Breslin,
Ms. Jemison and Ms. [redacted] are the records manager for Defense so I spoke to her about it and she asked me to inform Mr. Broyles so he knows what she and Ms. [redacted] needs to do.

It is much easier for the records manager to go through the emails since the order is very specific of what they want. Each division with OMC has a records manager and they received the emails and PST files of the attorneys when they leave.
Sincerely,

[redacted]
Security Specialist
OSD/OMC
[redacted]

Privacy Act of 1974 as Amended applies - this email may contain information that is protected IAW DoD5400.11R and is For Official Use Only (FOUO). Caution: Information contained in this message may be protected by the attorney/client privilege, attorney work.

-----Original Message-----
From: Broyles, Bryan Mr OSD OMC Defense
Sent: Wednesday, February 20, 2013 8:32 AM
To: [redacted] Ms OSD OMC Convening Authority
Cc: Jemison, Clemencia Ms OSD OMC Defense; [redacted] Ms OSD OMC Defense; [redacted] CIV OSD OMC Defense; [redacted] Ms OSD OMC Defense; [redacted] CTR OSD OMC; Mayberry, Karen E COL OSD OMC Defense; [redacted] CIV OSD OMC Convening Authority
Subject: RE: Request for Emails ~~(U)~~

Ms. [redacted]

This order is a direction to the Government, that is, the prosecution in this context, to produce those emails. It is not an order to us, the defense.

To quote, "That the Government shall produce copies of any communications, or records thereof, between the Government, and the Petitioner or any member of the Petitioner's trial defense team or Appellate Defense Counsel..."

As the emails that are responsive are, by definition, received by "the Government," that order is directed to them, not to us.

Mr. Broyles

-----Original Message-----
From: [redacted] Ms OSD OMC Convening Authority
Sent: Tuesday, February 19, 2013 4:37 PM
To: Broyles, Bryan Mr OSD OMC Defense
Cc: Jemison, Clemencia Ms OSD OMC Defense; [redacted] Ms OSD OMC Defense; [redacted] CIV OSD OMC Defense; [redacted] Ms OSD OMC Defense; [redacted] CTR OSD OMC; Mayberry, Karen E COL OSD OMC Defense; [redacted] CIV OSD OMC Convening Authority
Subject: Request for Emails ~~(U)~~
Importance: High

~~UNCLASS//FOUO~~
Good Afternoon Mr. Broyles,
I spoke to Ms. Jemison this afternoon in regards to this court order I received. The court is requesting emails listed in this court order. I've requested to the CIO to assist in this matter right away if possible.

If you have further questions please contact either myself or [redacted] for assistance.
Sincerely,
[redacted]
Security Specialist
OSD/OMC
[redacted]

[redacted]

Privacy Act of 1974 as Amended applies - this email may contain information that is protected IAW DoD5400.11R and is For Official Use Only (FOUO). Caution: Information contained in this message may be protected by the attorney/client privilege, attorney work.

Attachment C

IBRAHIM AHMED MAHMOUD AL QOSI,	)	IN THE UNITED STATES COURT OF MILITARY COMMISSION REVIEW
Petitioner,	)	**DECLARATION OF** [redacted]
	)	U.S. C.M.C.R. Case No. 13-001
v.	)	
UNITED STATES,	)	
Respondent.	)	

DECLARATION OF [redacted]

1. I am an Investigative Search Request Specialist in the Enterprise Information Technology Services Directorate ("EITSD") within the Washington Headquarters Services ("WHS") of the United States Department of Defense. My responsibilities include overseeing the technical execution of Investigation Search Request ("ISR") searches, including preparing the parameters for the search.

2. I am overseeing the ISR for documents ordered by the United States Court of Military Commission Review in its February 12, 2013 and February 26, 2013 Orders in *Al Qosi v. United States*, No. 13-001 (C.M.C.R. filed Jan. 4, 2013).

3. I initially received an ISR from Ms. [redacted] on 21 February 2013. Pursuant to that request, we searched the email boxes of six named individuals—Dirk Padgett, Seamus Quinn, Suzan Lachelier, Larry Martin, Travis Owens, and Paul Reicheler. We searched the email box for each individual, looking for any email from the individual to any of the other five. I was not

told at that time to limit the search only to the email boxes of the prosecutors. Further, Ms. [redacted] did not tell me which of the six individuals she identified were prosecutors.

4. On Thursday, 21 March 2013, I spoke with Captain Edward White, and Ms. Danielle Tarin, who identified themselves as counsel for the United States in the *al Qosi* matter to which this search was related. That was the first time they were made aware of the search parameters for this first search.

5. As I indicated in my 21 March 2013 declaration in this matter, the technician who performed this original search is my most experienced and capable ISR search technician, but he also has other important responsibilities relating to maintaining Microsoft Exchange email servers for the entire network serving the Office of the Secretary of Defense. During the time he was working on the original search on this ISR, he was also required to perform mission-critical duties related to a problem that arose with the operation of our email system.

6. On Monday, 25 March 2013, Ms. Tarin notified me that the original search results included email solely between defense counsel, and explained the requirement to limit the search solely to certain identified prosecution email accounts. I then concluded that the best way to remedy the situation was to re-run the search with the new parameters. In the course of developing those revised parameters, Ms. Tarin and I realized that one of the prosecutors whose email account should be searched had not been included in the initial search. Further, shortly before re-running the search, we also discovered that an additional defense counsel's name needed to be added. This time, Ms. Tarin identified for me who were the prosecutors and who were the defense counsel. I also understood her direction that we were not to search for any emails between or among members of the defense.

7. Nevertheless, through human error, it turned out that the email account of the defense counsel whose name was added at the end was included in the search. This error was discovered by a "privilege review team" of attorneys who screened these search results looking for just such mistakes. Based on their discovery of an intra-defense email, we stopped the review, scrubbed those search results, and undertook to re-execute the search a third time.

8. Since shortly after the first search was completed, and before the second search was undertaken, my principal expert ISR technician has been on leave outside the United States. As a result, I have had to rely on other, less experienced ISR technicians, who also have important collateral duties related to the operation of the OSD network, beyond ISR search execution. Further, because these other individuals are less experienced and less skilled than the principal ISR technician, conducting a search such as the one called for in this matter is more challenging for them than it might be for my expert were he available. Indeed, the technician who has principally responsible for executing the third search effort remained at work for approximately four hours beyond his normal duty hours yesterday evening, and had to spend considerable time talking with technical representatives of the search software vendor to get assistance in executing the search.

9. As a general rule, EITSD strives to provide a response to ISRs within 14 days, although historically EITSD has averaged a shorter turn-around, closer to eight or nine days. Some request obviously take longer than that, and others take less, depending on their complexity and scope. As a general rule, we operate on a modified first-in, first-out basis. In some instances, based on complexity, scope and available resources, I might adjust the priority of a particular request. As well, depending on the size of a search and the number of technicians available, there is a limit on the number of searches we can run simultaneously. At the moment, EITSD

has 10 ISRs pending. From 2011 to 2012, EITSD experienced nearly a 60% increase in ISR volume.

10. The third search, which we completed on 28 March 2013, produced over 541,000 emails. My team and I are standing by to continue to work with counsel for the Government to identify and produce to the Court all the documents responsive to its order as expeditiously as possible.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 28 March 2013

[redacted]

Investigative Search Request Specialist
Enterprise Information Technology Services Directorate
Washington Headquarters Services
United States Department of Defense

Attachment D

Tarin, Danielle S CIV OSD OMC Prosecution

From: [redacted] Mr WHS-EITSD
Sent: Monday, March 25, 2013 6:53 AM
To: Tarin, Danielle S CIV OSD OMC Prosecution
Cc: [redacted] CIV WHS-EITSD; [redacted] CIV WHS-EITSD; [redacted] CIV WHS-EITSD
Subject: WO0000000005324 ADM003075-12 WHS-ESD KBR NIPR/SIPR HOLD
Attachments: RD ADM000501-13 OMC Court Order 7767894.docx
Signed By: [redacted]

Danielle,

Investigative Search Request Specialist
Greatness consists of
how many people you serve.
[redacted]
Mark Center
[redacted]

EITSD Requirements Document

SACCP ADM000501-13

WO0000000011438

OMC

~~**Thursday, February 21, 2013**~~

Wednesday, February 27, 2013 (updated date)

1. **Point of Contacts**

NAME:	[redacted]
PHONE:	[redacted]
EMAIL:	[redacted]

2. **Data to be searched (E-mail and/or Shared Files and/or HOME Directory)**
   - Email,
3. **Search terms (using Boolean logic)**
   - **Any email communications between the recipients below.**

NAME	COMMENTS
Dirk Padgett	
Seamus Quinn	Departed OMC-P
Suzan Lachelier	
Larry Martin	lhm@foleyhoag.com
Travis Owens	
Paul Reicheler	preichle@foleyhoag.com

4. **Search Dates (beginning and ending dates)**
   - ~~July 2009 through August 2010~~
   - July 2009 through Present (updated date)
5. **CLASSIFICATIONS:**

UNCLASSIFIED	CLASSIFIED:
NIPR	SIPR
	JWICS

6. **Restore frequency**
   - eVault
7. **Scope of users, organizations and/or servers**
   - OMC
8. **Estimate/Actual Time and Cost ($126.00 X TIME)**

$126.00/HR	ESTIMATED ISR POC	ESTIMATED SRH TECH	ACTUAL ISR POC	ACTUAL SRH TECH
TIME:	**3 hours**	**1 Hour**	**3 HRS**	**1 HR**
COST:	**$378**	**$126**	**$387**	**$126**

9. **Requested Suspense Date:**
   - Requesters Suspense DATE: 3/21/2013
   - EITSD Suspense DATE: 3/20/2013

10. Delivery media and method;

NW PATH FOR TRANSFER OF RESULTS.
O:\Prosecution\Records Management\Retain Files\OMC

11. Privileged or Work Production Information:

YES

I have spoken with [redacted] of the OMC Convening Authority, and have no objection to the legal sufficiency of this search request.

Theresa:

This legal determination is limited to the propriety of conducting the administration search itself. As I expressed over the phone, I am concerned about protecting OMC-Prosecution attorney work product. Accordingly, prior to disseminating the results of this search, please consult with the OMC-Prosecution Records Keeper to make sure that all such records are protected from inadvertent distribution.

V/r

Paul

Paul A. Embroski
Assistant General Counsel
Special Assistant United States Attorney
Washington Headquarters Services
Department of Defense
The Pentagon
[redacted]

12. ISR Completion Date:

- 03/21/2013

13. ISR Completion comment.

- Records Found: (YES)
- Over 20,000 hits; the large number of hits is because the scope of the search was broad. If search terms would have been included the number of hits would have been reduced.

Attachment E

Tarin, Danielle S CIV OSD OMC Prosecution

From: RSS dd - EITSD Investigative Search Requests
Sent: Monday, March 25, 2013 8:06 AM
To: Tarin, Danielle S CIV OSD OMC Prosecution
Subject: WO0000000011438 ISR ADM000501-13 OMC PROSECUTORS 776789 Court Order
Signed By: [redacted]

Danielle,

I found out from the tech this morning after we talked that the SPIR results have also been transferred to the location provided. Therefore those results will also be researched and the names you identified to me will be redacted.

I have a question. In EITSD process of submitting an ISR there is a question that asks who will be responsible to review the results for privileged or work production information. Here are the names that were provided that would be responsible to review the results. [redacted] Clemiencia Jemison [redacted] and [redacted]. Are these individuals permitted to redact the results?

Thanks,

Investigative Search Request Specialist
Greatness consists of
how many people you serve.
[redacted]
Mark Center
[redacted]

Attachment F

Tarin, Danielle S CIV OSD OMC Prosecution

From: White, Edward S CAPT OSD OMC Prosecution
Sent: Wednesday, March 20, 2013 5:16 PM
To: [redacted] Ms OSD OMC Convening Authority; Tarin, Danielle S CIV OSD OMC Prosecution; [redacted] Ms WHS-EITSD
Subject: RE: Qosi comms search
Signed By: [redacted]

Thanks, [redacted] We'll follow up with Ms. [redacted] and [redacted]

v/r, ESW

-----Original Message-----
From: [redacted] Ms OSD OMC Convening Authority
Sent: Wednesday, March 20, 2013 5:12 PM
To: White, Edward S CAPT OSD OMC Prosecution; Tarin, Danielle S CIV OSD OMC Prosecution; [redacted] Ms WHS-EITSD
Cc: Woodard, Teresa Ms OSD OMC Convening Authority
Subject: Re: Qosi comms search
Importance: High

Good Afternoon CAPT White,
Per our conversation this afternoon I spoke to the Branch Chief, Ms. [redacted] in regards to the research for the Court Order for OMC. They have several other organizations they are doing research also. I spoke the to her staff that is leading search [redacted]. and of this afternoon they were still researching the Court Order for OMC. The amount and years for the research is insurmountable amount. Hopefully the research may be completed by Thursday, 21 March 2013.

Good Afternoon Ms. [redacted],
CAPT White needs to request an extension through an Affidavit. He can tell you exactly what he needs.

If anyone need further assistance just let me know. I'm still on BB: [redacted] and on my way back to the office.
Sincerely,

CAP
[redacted]
Special Security Officer
OSD/OMC
[redacted]

----- Original Message -----
From: White, Edward S CAPT OSD OMC Prosecution
Sent: Wednesday, March 20, 2013 01:18 PM
To: [redacted] Ms OSD OMC Convening Authority; Tarin, Danielle S CIV OSD OMC Prosecution
Subject: Qosi comms search

[redacted]

Stopped by your office about 20 minutes ago, after my meeting with YNC[redacted] but you were out. Sorry I missed you.

Danielle told me you expect to provide us with the results of the email retrieval for the Qosi case tomorrow. Unfortunately, tomorrow is also our deadline to produce the responsive emails to the Court -- and we'll need time to review them before submission. So, I'm thinking we need to file a motion to extend our time before COB today. To support that motion we really need a written/signed declaration from someone -- maybe you, maybe someone at CIO who is working this issue -- to explain the relevant facts to the Court.

I'm out of the office myself, but would you please call me on my BB at [redacted] to discuss when you get this message? Thanks.

V/r, Ed White

Tomorrow

Attachment G

IBRAHIM AHMED MAHMOUD AL QOSI,	)	IN THE UNITED STATES COURT OF MILITARY COMMISSION REVIEW
Petitioner,	)	**DECLARATION OF** [redacted]
	)	U.S. C.M.C.R. Case No. 13-001
v.	)	
UNITED STATES	)	
Respondent.	)	

DECLARATION OF [redacted]

1. I am an Investigative Search Request Specialist in the Enterprise Information Technology Services Directorate (EITSD) within the Washington Headquarters Services of the United States Department of Defense. My responsibilities include overseeing the technical Investigation Search Request (ISR) Search Team and preparing the requirements for the search.

2. I am overseeing the ISR for documents ordered by the United States Court of Military Commission Review in its February 12, 2013 and February 26, 2013 Orders in *Al Qosi v. United States*, No. 13-001 (C.M.C.R. filed Jan. 4, 2013).

3. Barring unforeseen events, EITSD will complete the ISR for these documents tomorrow, and will make the results available to counsel for Respondent by close of business tomorrow.

4. EITSD's limited resources constrained EITSD's ability to complete the ISR before close of business tomorrow. There are eight ISRs currently in the EITSD search queue that vary in scope and priority levels. EITSD must execute ISRs requested by Congress and ISRs requested under the Freedom of Information Act, a statute that requires the Government to

respond within a specified time limit. One pending ISR requires EITSD to search information from 10,000 users over a twenty-year time period. Also, each search technician must balance executing ISRs with other work assignments, and a limited number of search technicians are qualified to execute the ISRs. Only one technician is qualified to conduct the ISR at issue in *Al Qosi*. Each of these factors impacts EITSD's ability to complete ISRs quickly. EITSD has made every effort possible to provide counsel for Respondent with the ISR results as soon as it can.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 21 March 2013

[redacted]

Investigative Search Request Specialist
Enterprise Information Technology Services Directorate
Washington Headquarters Services
United States Department of Defense

Attachment H

Tarin, Danielle S CIV OSD OMC Prosecution

From: RSS dd - EITSD Investigative Search Requests
Sent: Tuesday, March 26, 2013 6:31 AM
To: Tarin, Danielle S CIV OSD OMC Prosecution
Cc: [redacted] CIV WHS-EITSD; [redacted] CIV WHS-EITSD; Tarin, Danielle S CIV OSD OMC Prosecution; [redacted] CTR WHS-EITSD
Subject: WO00000000011438 ISR ADM000501-13 OMC Court Order 7767894
Signed By: [redacted]

Danielle,

You don't have to worry about seeing any emails with privileged or work production information in the results.

Remember the computer only does what you tell it, it is objective in its search. The search will be any emails FROM or TO the prosecution attorneys TO the defense or FROM the defense attorneys. Again no responsive records will between the defense attorneys themselves will end up in the results. Once the technician inputs the search parameters into search engine it will only provide responsive results based upon those requirements.

The search does not have to be executed within the mailboxes of the defense attorneys to provide the responsive results you are seeking.

I hope that helps,

Investigative Search Request Specialist
Greatness consists of
how many people you serve.
[redacted]
Mark Center
[redacted]

-----Original Message-----
From: Tarin, Danielle S CIV OSD OMC Prosecution
Sent: Monday, March 25, 2013 6:26 PM
To: [redacted] Mr WHS-EITSD
Subject: RE: RD ADM000501-13 OMC Court Order 7767894.docx

[redacted] would you please confirm that EITSD is searching for responsive emails in only the prosecution team members' email accounts?

Thank you.

Best,
Danielle

-----Original Message-----
From: [redacted] Mr WHS-EITSD
Sent: Monday, March 25, 2013 12:09 PM
To: Tarin, Danielle S CIV OSD OMC Prosecution
Subject: RD ADM000501-13 OMC Court Order 7767894.docx

Danielle,

Please review this Requirements Document to make sure I am accurate. The word waiv is that correct or should it have an "e" wave or is this an acronym?

Thanks,

Investigative Search Request Specialist
Greatness consists of
how many people you serve.
[redacted]
Mark Center
[redacted]

Attachment I

Tarin, Danielle S CIV OSD OMC Prosecution

From: [redacted] CIV WHS-EITSD
Sent: Wednesday, March 27, 2013 7:09 PM
To: OSullivan, Michael Col OSD OMC Prosecution; [redacted] CTR, DoD OGC; [redacted] Mr, DoD OGC [redacted] Mr, DoD OGC
Cc: White, Edward S CAPT OSD OMC Prosecution; Tarin, Danielle S CIV OSD OMC Prosecution; [redacted] Mr WHS-EITSD; [redacted] CTR WHS-EITSD
Subject: Current Update as of 1907
Signed By: [redacted]

Col O'Sullivan,

There were unforeseen technical issues regarding the search and Operations had to restart the search. The search is running now but it will not be completed until late tonight or tomorrow morning.

The initial ISR results were provided based on the identified requirements which met the initial SLA. The search was modified by OMC. Therefore, the search required modifications of the search parameters.

There is no way to expedite the search since it has to create and search all the Exchange vaults while at the same time create indexes.

V/r,

[redacted]

-----Original Message-----
From: OSullivan, Michael Col OSD OMC Prosecution
Sent: Wednesday, March 27, 2013 6:28 PM
To: [redacted] CIV WHS-EITSD; [redacted] CTR, DoD OGC; [redacted] Mr, DoD OGC; [redacted] Mr, DoD OGC
Cc: White, Edward S CAPT OSD OMC Prosecution; Tarin, Danielle S CIV OSD OMC Prosecution; [redacted] Mr WHS-EITSD; [redacted] CTR WHS-EITSD
Subject: RE: : Current Update as of 1824

[redacted],

I thought this search was started a couple of hours ago when we spoke. They're just now getting started?

-----Original Message-----
From: [redacted] CIV WHS-EITSD
Sent: Wednesday, March 27, 2013 6:27 PM
To: OSullivan, Michael Col OSD OMC Prosecution; [redacted] CTR, DoD OGC; [redacted] Mr, DoD OGC [redacted] Mr, DoD OGC
Cc: White, Edward S CAPT OSD OMC Prosecution; Tarin, Danielle S CIV OSD OMC Prosecution; [redacted] Mr WHS-EITSD; [redacted] CTR WHS-EITSD
Subject: : Current Update as of 1824

Col O'Sullivan,

Operations just started the revised SIPR search this afternoon it is running now.

As soon as we have finished the search and export will be done. A completion notification will be sent to everyone on this email string.

V/r,

[redacted]

-----Original Message-----
From: OSullivan, Michael Col OSD OMC Prosecution
Sent: Wednesday, March 27, 2013 4:40 PM
To: [redacted] CTR, DoD OGC; [redacted] Mr, DoD OGC; [redacted] Mr, DoD OGC
Cc: White, Edward S CAPT OSD OMC Prosecution; Tarin, Danielle S CIV OSD OMC Prosecution; [redacted] CIV WHS-EITSD; [redacted] Mr WHS-EITSD; [redacted] CTR WHS-EITSD
Subject: RE: Current Update as of 1609

Thanks much Mr [redacted] We appreciate it.

MOS

-----Original Message-----
From: [redacted] CTR, DoD OGC
Sent: Wednesday, March 27, 2013 4:20 PM
To: OSullivan, Michael Col OSD OMC Prosecution; [redacted] Mr, DoD OGC; [redacted] Mr, DoD OGC
Cc: White, Edward S CAPT OSD OMC Prosecution; Tarin, Danielle S CIV OSD OMC Prosecution; [redacted] CIV WHS-EITSD; [redacted] Mr WHS-EITSD; [redacted] CTR WHS-EITSD
Subject: RE: Current Update as of 1609

Sir,

We have created the mailbox on the SIPR and mapped the 3 OGC reviewers to that mailbox, so on the SIPR it should just be a matter of disconnecting the old pst and reconnecting to the new pst files.

I will work on creating a similar process on the NIPR and that should be completed this evening.

Thanks

[redacted]
OGC Project Manager
[redacted]

[redacted]

CAUTION: This message may contain information protected by the attorney-client, attorney work product, deliberative process, or other privilege. Do not disseminate without the approval of the Office of the DoD General Counsel.

-----Original Message-----
From: OSullivan, Michael Col OSD OMC Prosecution
Sent: Wednesday, March 27, 2013 4:09 PM
To: [redacted], Mr, DoD OGC; [redacted] Mr, DoD OGC
Cc: White, Edward S CAPT OSD OMC Prosecution; Tarin, Danielle S CIV OSD OMC Prosecution; [redacted] CIV WHS-EITSD; [redacted] Mr WHS-EITSD; [redacted] CTR, DoD OGC; [redacted] CTR WHS-EITSD
Subject: Current Update as of 1609

[redacted]

Just got off the phone with [redacted] and [redacted]. They are running the search until it is complete. Here's the search parameters:

They are searching only the mailboxes of Dirk Padgett, Ralph Paradiso, and Seamus Quinn and searching only for emails that have one or more of the following words or roots: "waiv"; "appeal"; "appellate"; and "withdraw." They are searching only during the period between July 2009 and present.

This search should only produce emails between prosecution counsel or directed to defense counsel or from defense counsel sent to prosecution counsel.

He expects the searches on SIPR and NIPR to be done between 1730 and 1800, but that's an estimate.

He will load the results, once completed, into the shared drive destination used for the same purpose earlier today and he will delete the original file from that space so there's no confusion about which file needs to go to the privilege review attorneys. At that point, we probably need OGC IT (Mr [redacted] or designee) to load that pst file into the reviewing attorneys' mailboxes so they can conduct the review.

All those on this email, let me know if you have any questions or concerns.

Thanks.

MOS

MICHAEL J. O'SULLIVAN, Col, USAF
Deputy Chief Prosecutor
Office of the Chief Prosecutor of Military Commissions
1610 Defense Pentagon
Washington DC 20032
[redacted]

Connell, James G III CIV OSD OMC Defense

From: Mayberry, Karen E COL OSD OMC Defense
Sent: Wednesday, April 10, 2013 7:54 PM
To: MLA DD - OMC Defense
Cc: Mr. David Nevin; Mr. Rick Kammen; Mr. Jim Harrington
Subject: Directive regarding OCDC personnel use of the WHS Enterprise Network for Confidential or Privileged Material
Signed By: [redacted]

Importance: High

ALCON:

As you all know, there have been unauthorized disclosures of OCDC privileged information and recurring events that have caused materials stored on the O & H drives to be modified, corrupted, or in some cases lost all together. As a result of these events, I have determined that the integrity of these systems is not sufficient to ensure that we safeguard confidential and privileged materials, as it is our ethical duty to do.

Effective immediately and until further notice, I direct that all OCDC personnel, (including contractors and outside consultants associated with OCDC representational matters), not transmit anything that is confidential or privileged over the Enterprise email. Furthermore, OCDC personnel will not save files that contain confidential or privileged materials on the O or H drives. All of the active litigation teams have been provided external hard drives. Those drives should be used for the foreseeable future to allow you to create and store documents -- especially those necessary to meet court imposed filing deadlines.

We are looking into alternatives for the remaining personnel. This is an interim measure until such time as we can develop a long term and permanent course of action; with the understanding that there may be multiple iterations in the days and weeks ahead.

I will provide more detailed guidance within the next 7-10 days. Do not forward this email outside of OCDC channels. I will notify the Convening Authority and Mr Koffksy. If you have any questions, please direct them to either myself or Mr. Broyles.

Karen E. Mayberry, Col, USAF
Chief Defense Counsel
Military Commissions
1620 Defense Pentagon, Room [redacted]
Washington, D.C. 20301-1620
[redacted]
Bberry: [redacted]