

MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA

v.

**KHALID SHAIKH MOHAMMAD;
WALID MUHAMMAD SALIH
MUBARAK BIN 'ATTASH;
RAMZI BINALSHIBH;
ALI ABDUL AZIZ ALI;
MUSTAFA AHMED ADAM AL
HAWSAWI**

AE 286-15 (MFL)(GOV)

Government Motion

For Leave To File a Supplement to
AE 286O (GOV), Government Response to
Mr. Ali's Third Supplement to Defense
Motion to Compel Discovery of Senate
Select Committee on Intelligence Study of
RDI Program and Related Documents

24 May 2016

1. Timeliness

The Prosecution timely files this Motion for Leave To File a Supplement under Military Commissions Trial Judiciary Rule of Court 3.7.

2. Relief Sought

The Prosecution respectfully requests the Commission grant the Prosecution leave to supplement its Response (AE 286O (GOV)) to Mr. Ali's Third Supplement to Defense Motion to Compel Discovery of Senate Select Committee on Intelligence Study of RDI Program and Related Documents (AE 286 (AAA 3rd Sup)).

3. Overview

The Commission should grant the Prosecution leave to file a supplement so that the Prosecution can call the Commission's attention to the decision of the United States Court of Appeals for the District of Columbia Circuit in *ACLU v. CIA*, 2016 U.S. App. LEXIS 8776 (D.C. Cir. May 13, 2016).

4. Burden of proof

As the moving party, the Prosecution bears the burden to prove, by a preponderance of the evidence, any factual issue the resolution of which is necessary to decide this Motion for Leave To File a Supplement. R.M.C. 905(c)(1)-(2).

5. Facts

On 18 March 2016, Defense counsel for Mr. Ali filed AE 286 (AAA 3rd Sup), Mr. Ali's Third Supplement to Defense Motion to Compel Discovery of Senate Select Committee on Intelligence Study of RDI Program and Related Documents. On 13 April 2016, the Prosecution submitted its response, *see* AE 286O (GOV), to which the Defense replied on 20 April 2016. *See* AE 286P (AAA). On 13 May 2016, the D.C. Circuit decided *ACLU v. CIA*, 2016 U.S. App. LEXIS 8776 (D.C. Cir. May 13, 2016). The Prosecution now seeks to supplement its Response to call the Commission's attention to the D.C. Circuit's decision, which is relevant and was referenced by both parties in their respective pleadings.

6. Law and Argument

Military Commissions Trial Judiciary Rule of Court 3.5.e. permits a party to file a supplement if it "add[s] new facts, not known at time of filing, or newly decided case law to an existing motion." The Commission should permit the Prosecution to file a supplement because the supplement will add newly decided case law (*ACLU v. CIA*) to an existing motion (AE 286).

7. Oral Argument

The Prosecution does not request oral argument on this Motion for Leave To File a Supplement.

8. Witnesses and Evidence

The Prosecution does not rely on any witnesses or attachments to support this Motion for Leave To File a Supplement.

9. Conference with Opposing Party

On 16 May 2016, the Prosecution consulted with the Defense on the instant Motion for Leave and impending Supplement. Counsel for Messrs. Bin 'Attash, Ali, and Hawsawi did not

object to the Motion or Supplement. Counsel for Messrs. Mohammad and Binalshibh did not respond within the 24-hour timeframe established by Military Commissions Trial Judiciary Rule of Court 3.5.k.

10. Additional Information

The Prosecution has no additional information.

11. Attachments

A. Certificate of Service, dated 24 May 2016.

Respectfully submitted,

//s//
Clay Trivett
Managing Trial Counsel

Christopher Dykstra
Major, USAF
Assistant Trial Counsel

Mark Martins
Chief Prosecutor
Military Commissions

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on the 24th day of May 2016, I filed **AE 286-15 (MFL)(GOV) Government Motion** For Leave To File a Supplement to AE 286O (GOV), Government Response to Mr. Ali's Third Supplement to Defense Motion to Compel Discovery of Senate Select Committee on Intelligence Study of RDI Program and Related Documents with the Office of Military Commissions Trial Judiciary and I served a copy on counsel of record.

//s//

Clay Trivett
Managing Trial Counsel
Office of the Chief Prosecutor
Office of Military Commissions