

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

UNITED STATES OF AMERICA v. ABD AL HADI AL-IRAQI	AE 020I ORDER Defense Motion to Compel Discovery 27 May 2015
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1. In AE 020F, the Defense requested the Commission compel production of a list of items initially requested on 11 June 2014. The requested items relate to correspondence, materials, notes, and evidence surrounding the detention, interviews, and interrogations of the Accused and his alleged co-conspirators, and an unredacted copy of the U.S. Senate Select Committee on Intelligence’s Study of the Central Intelligence Agency’s Detention and Interrogation Program (SSCI Report), adopted on 13 December 2012.¹ (AE 020F at 1–2). The Prosecution response states, “The Commission should deny the Defense Motion because it is premature. The Government has produced, and continues to produce, relevant and responsive discovery

¹ The specific information requested on 11 June 2014 and the subject of this motion is as follows:

s. All draft reports, final reports, and related agent notes, pertaining to any law enforcement or intelligence interviews of the accused, and named and unnamed co-conspirators;

t. Copies of all correspondence, evidence, and other information reviewed by law enforcement officials or agents of the United States prior to their interviews of the accused, and named and unnamed co-conspirators;

u. All materials relating to the interrogation and debriefing of the accused, and named and unnamed co-conspirators, at any location, including, but not limited to, all interrogation/debriefing logs, plans, proposals, authorizations, knowledgeability briefs, cables, requests for legal opinions, issued legal opinions, summary interrogation reports, specific information requests (SIR), intelligence information reports (IIR), and source directed reports (SDR);

v. The names, interrogator numbers, and contact information for all personnel participating in the interrogations or debriefings of the accused, and named and unnamed co-conspirators, to include translators. If the government invokes some privilege in refusing to produce this information, please provide the basis of the privilege(s) invoked;

ee. An unredacted copy of the U.S. Senate Select Committee on Intelligence’s Study of the Central Intelligence Agency’s Detention and Interrogation Program, adopted on 13 December 2012;

ff. An unredacted copy of all sources, footnotes and other documents cited in the Senate Select Committee on Intelligence’s report adopted on 13 December 2012, to include recorded witness interviews. (AE 020F at 1–2 and Attachment B, pp. 4–6).

consistent with all applicable authority.” (AE 020H at 1). The Defense did not file a reply.

Neither party requested oral argument.²

2. The Defense filed this motion in anticipation of the 20–31 July 2015 *In Personam* Jurisdiction Hearing; more specifically, the requested materials are potentially relevant to the 9 June 2014 “Deadline for filing a Motion(s) to Suppress the Accused’s confessions, admissions and other statements upon which the Government will rely during the Jurisdictional Hearing.” (See AE 020D, Scheduling Order). In a telephonic Rule for Military Commissions (R.M.C.) 802 conference with the parties on 6 May 2015, the Prosecution represented that it has provided the Defense all of the material it intended to be considered during the *In Personam* Jurisdiction Hearing. The Prosecution did however acknowledge that the Defense has not been provided some agent notes related to interviews and interrogations of the Accused, as well as discovery related to the Accused’s conditions of detention. The Prosecution noted the discovery related to conditions of detention would be the subject of a forthcoming Military Commission Rule of Evidence (M.C.R.E.) 505 request for summaries and substitutions, and for this reason was not previously provided to the Defense. The Defense articulated that discovery related to conditions of detention may give rise to future Defense motions. Recognizing the unlikelihood this discovery will be provided to the Defense within a sufficient timeframe to meet the motions deadlines for the *In Personam* Jurisdiction Hearing, the Commission acknowledged the Defense will have an opportunity to litigate any potential issues related to this discovery in accordance with future evidentiary motions milestones. The Commission further notes that evidence which may be properly considered by the Commission at the hearing for the purpose of determining *in personam* jurisdiction will not necessarily be admissible at trial. See M.C.R.E. 104(a).

3. The Prosecution argues the Defense motion to compel discovery is premature. With respect to discovery related to the *In Personam* Jurisdiction Hearing, the Commission finds the Defense’s

² “In accordance with R.M.C. 905(h), the decision to grant oral argument on a written motion is within the sole discretion of the Military Judge.” Military Commissions Trial Judiciary Rule of Court 3(5)(m)(May 2014). In this instance, oral argument is not necessary for the Commission to decide the issue before it.

motion is timely. The Prosecution shall provide the Defense, to the extent not already provided,³ all discovery related to evidence intended for consideration at the *In Personam* Jurisdiction Hearing. Any evidence related to discoverable matters pertaining to the *In Personam* Jurisdiction Hearing not promptly provided to the Defense will not be considered by the Commission for the purposes of determining *in personam* jurisdiction. For all other discovery requested by the Defense, including the unredacted SSCI Report, the Commission finds the Defense's motion to compel discovery is premature as the Prosecution has not had the opportunity to completely fulfill its acknowledged discovery obligations.

4. Accordingly, the defense motion is granted in part, only as to discovery related to evidence intended for consideration at the *In Personam* Jurisdiction Hearing docketed for 20-31 July 2015. The defense motion is otherwise DENIED at this time. The Defense may seek an order to compel discovery of the same matters at a future date should the Prosecution fail to comply with its discovery obligations.

So ORDERED this 27th day of May, 2015.

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J.K. WAITS
CAPT, JAGC, USN
Military Judge

³ AE 035-043 are "Government Motions[s] *In Limine* to Consider Evidence During Preliminary Matters and to Admit Evidence for Trial On the Merits."