

UNCLASSIFIED//FOR PUBLIC RELEASE
**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA

v.

ABD AL HADI AL IRAQI

AE 053J

**Defense Notice To Commission Pursuant
to AE 053I**

1 April 2016

1. In accordance with this Commission's Order, Appellate Exhibit (AE) 053I, the Defense respectfully advises the Commission of the current status of the Defense Counsel who have filed notices of appearance in the instant case :

<u>Attorney Name</u>	<u>Security Clearance Status</u>
A. Premal Dharia, DoD GS Civilian	Interim Top Secret ¹ (SCI pending)
B. Brent Rushforth, Pro Bono	TS (SCI pending)
C. MAJ Robert T. Kincaid, III	TS/SCI
D. MAJ Wendall Hall	TS/SCI
E. LCDR Keith Lofland	TS/SCI

2. The above list does not reflect the additional clearance requirements that have emerged since the above attorneys were assigned to this case. The Defense has recently been advised that an additional clearance to access a new program is now required in order to effectively represent the Accused. However, as of this date, the Government has not granted any member of the Defense access to any information covered under that program. This is yet another unreasonable,

¹ Ms. Dharia has been granted an Interim Top Secret Clearance by the Washington Headquarters Services (WHS), and an Interim Secret Clearance by the Department of Defense (DOD). The Defense has received no explanation for this discrepancy.

unjustifiable and inexplicable delay of the Accused's right to substantive representation by skilled, informed and qualified counsel.²

3. Pursuant to the Order, the Defense will promptly advise the Commission in writing as each additional clearance is obtained by each member of the Defense.

4. Additional attorneys are pending assignment to this matter and timely updates will likewise be submitted in accordance with the terms of the Commission's Order.

Respectfully Submitted,

//s//

ROBERT T. KINCAID, III
Major, USA
Detailed Defense Counsel

//s//

PREMAL DHARIA
Defense Counsel

//s//

BRENT RUSHFORTH
Pro Bono Counsel

//s//

WENDALL HALL,
Major, USA
Detailed Defense Counsel

/s//

KEITH B. LOFLAND,
Lieutenant Commander, JAGC, U.S. Navy
Detailed Defense Counsel

² As the Defense stated in AE054K, "...when the Federal Government assumes and reserves for itself alone the responsibility for the entire [security clearance or commissions] process, it and it alone must bear the burden—and consequences—of its actions, or its failures, especially when such interfere with, impact or affect an Accused's Constitutional rights." Indeed, the 30 March 2016 Supreme Court decision in *Luis v. United States*, 578 U.S. ____ (2016)(http://www.supremecourt.gov/opinions/15pdf/14-419_nmip.pdf) reinforces the conclusion that the government cannot just implement processes, procedures, statutes and practices that serve to effectively deny an Accused of his substantive due process protections. The Accused continues to be prejudiced not only by the Government's dilatory mismanagement of its own, exclusively controlled security clearance process for the Accused's attorneys in this case, but also by the Government's denial of the Accused's right to counsel that is not cleared to defend him on the evidence—evidence which most of the Accused's attorneys cannot now review through no fault of either the Accused or his attorneys. Indeed, the Accused's attorneys have lost months of preparation time due to the Government's failure to act with purposeful due diligence in this regard and yet the non-attribution of any substantive speedy trial clock protections by this Commission denies the Accused of all effective speedy trial protections provided by the Constitution.

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on 1 April 2016, I filed the foregoing Notice with the Office of Military Commissions Trial Judiciary and I served a copy on counsel of record.

//s//

ROBERT T. KINCAID, III, MAJ, USA
Detailed Defense Counsel