MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA v. ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI	**AE 114** **Government Response** To Defense Motion To Find That R.M.C. 703 Violates 10 U.S.C. § 949j(a)(1) And Mr. Nashiri's Constitutional And Statutory Rights To Due Process 5 October 2012

1. Timeliness

This response is timely filed pursuant to Military Commissions Trial Judiciary Rule of Court 3.7.c(1).

2. Relief Sought

The government respectfully requests that the Commission deny the defense motion.

3. Overview

R.M.C. 703 fully complies with 10 U.S.C. § 949j(a) and does not deny the accused any rights to which he is entitled. In the Military Commissions Act of 2009 (2009 M.C.A.), 10 U.S.C. § 948a *et seq*., Congress added language to the prior section 949j, of the 2006 M.C.A., saying that "[t]he opportunity to obtain witnesses and evidence shall be comparable to the opportunity available to a criminal defendant in a court of the United States under article III of the Constitution." 10 U.S.C. § 949j(a)(1) (2009). Congress also, in the very same 2009 M.C.A., authorized the Secretary of Defense to promulgate implementing regulations and directed him, in so doing, to apply the procedures and rules of evidence used in general courts-martial, except as otherwise provided in the M.C.A., or as he deemed necessary. 10 U.S.C. § 949a(a) (2009). Nothing in the 2009 M.C.A., however, directed, or was intended to direct, the Secretary to replace R.M.C. 703 with Federal Rule of Criminal Procedure (F.R.C.P.) 17. Further, because the

substantive standard applied by judges in both federal court and military commissions to determine a party's right to the production of witnesses and evidence is essentially identical—*i.e.* whether the witness's testimony is relevant and necessary (military commissions) or relevant and material (article III courts)—the defense's opportunity to obtain witnesses and evidence is, in fact, comparable to the opportunity available in an article III court, as required by Section 949j(a)(1). While the *procedures* by which the parties obtain judicial review differ, those procedural differences do not undermine the comparability of the "opportunity to obtain" witnesses and evidence. The defense here can compel the testimony of the same witnesses in this military commission that they could call in federal court, and obtain the production of the same evidence, because the substantive right is essentially identical in both fora. In addition, both military commissions and article III courts employ nationwide subpoena power to compel witnesses to appear and testify. Consequently, Rule for Military Commission (R.M.C.) 703 does not violate the statute, as the defense contends.

4. Burden of Proof

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)-(2); M.C.T.J. Rule 3.8.a.

5. Facts

The accused in this case is charged with multiple offenses related to terrorist attacks against the United States and its allies. These attacks include the attempted bombing of USS THE SULLIVANS (DDG 68) on 3 January 2000, the bombing of USS COLE (DDG 67) on 12 October 2000, and the bombing of the French supertanker, MV *Limburg*, on 6 October 2002, which together resulted in the deaths of 18 people, serious injury to dozens of others, and significant property damage. On 28 September 2011, the Convening Authority referred charges against the accused for the attacks on COLE and MV *Limburg* and the attempted attack on THE SULLIVANS.

In *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), the Supreme Court held that the adoption by the President and the Secretary of Defense of military commission procedures that deviated from those governing courts-martial was inconsistent with the Uniform Code of Military Justice ("U.C.M.J."). Therefore, as a statutory matter, because the U.C.M.J. imported the requirements of Common Article 3, and those requirements were not met, the Court determined that the pending military commissions could not proceed as constituted.

In response to that decision, Congress enacted the Military Commissions Act ("M.C.A.") of 2006, which provided statutory authority for the military commissions, limited their jurisdictional scope, codified various offenses triable by the commissions, and reformed their procedures in various ways to enhance the procedural rights of military commission defendants.

In 2009, Congress amended the M.C.A. as part of the National Defense Authorization Act for Fiscal Year 2010. *See* Pub. L. No. 111-84, div. A, tit. XVIII, 123 Stat. 2574. Prior to enacting that law, Congress took testimony and studied the conduct of military commissions under the 2006 M.C.A. Among the matters considered by Congress in enacting the 2009 M.C.A. were criticism by military commissions defense counsel, including the Chief Defense Counsel, about the 2006 law. In enacting the 2009 M.C.A., Congress inserted a new sentence into section 949j(a)(1) of the Act.

The charges against the accused were sworn pursuant to the 2009 M.C.A. In the 2009 M.C.A., Congress provided accused persons facing trial by military commission with unprecedented protections. Congress guaranteed unprivileged enemy belligerents many of the same procedural and substantive rights the Uniform Code of Military Justice affords prisoners of war.[1] For the accused in a capital case, the M.C.A. and Rules for Military Commissions provide additional procedural protections.[2]

[1] *See*, *e.g.*, 10 U.S.C. § 949a(b)(2) (granting the accused the right to present evidence in the accused's defense; to be present at all appropriate sessions of the military commission; to counsel, including counsel learned in the applicable law relating to capital cases; to self-representation; to suppression of evidence that is not reliable or probative; and to suppression of evidence that is unduly prejudicial); *id.* § 949c(b) (granting the accused the right to counsel); *id.* § 949h (granting the accused the right to not be tried twice for the same offense); *id.* § 949j

6. Law and Argument

I. R.M.C. 703 Fully Complies with 10 U.S.C. § 949j(a)

The defense argues that R.M.C. 703 violates Section 949j(a) of the 2009 M.C.A., 10 U.S.C. § 949j(a) (2009), because the procedures by which the defense requests witnesses and evidence in a military commission (like those used in courts-martial) differ from the procedures used in article III courts under the Federal Rules of Criminal Procedure. The defense is mistaken.

A. R.M.C. 703 Provides the Defense a Comparable Opportunity To Obtain Witnesses and Evidence to the Opportunity Available in an Article III Court

Section 949j(a) of the 2009 M.C.A. does not require that military commissions use procedures identical to those in the Federal Rules of Criminal Procedure. It only requires that the substantive "opportunity to obtain" witnesses and evidence be comparable to the opportunity to obtain witnesses and evidence in an article III court. 10 U.S.C. § 949j(a). R.M.C. 703 satisfies that requirement by applying a comparable substantive standard for the compulsory production of witnesses and evidence in both fora.

In evaluating the comparability of the "opportunity to obtain" witnesses and evidence, the proper focus must be on whether the accused actually has any legal entitlement to such testimony or evidence. Examination of the standards for the issuance of compulsory process (i.e. the accused's legal entitlement) in both military commissions and article III courts reveals that a

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(granting the accused the opportunity to obtain witnesses and other evidence); *id.* § 949s (granting the accused the right against cruel or unusual punishments); *id.* § 950g (granting the accused the right to review by the United States Court of Appeals for the District of Columbia Circuit); *id.* § 950h (granting the accused the right to appellate counsel).

[2] *See, e.g.,* 10 U.S.C. § 949m (prohibiting a military commission from sentencing any person to death unless, *inter alia*, "all members present at the time the vote was taken concurred in the sentence of death"; "trial counsel expressly sought the penalty of death by filing an appropriate notice [of which aggravating factors the prosecution intends to prove] in advance of trial"; and the members unanimously find beyond a reasonable doubt an aggravating factor and that factor substantially outweighs any extenuation or mitigation); R.M.C. 1004(b)(7) (requiring members to vote "separately on each aggravating factor" by secret written ballot).

comparable substantive standard governs the production of witnesses and evidence in both military commissions and article III courts.

Under Federal Rule of Criminal Procedure 17, a defendant seeking the compulsory production of a witness must show that the witness's presence is necessary for an adequate defense. Fed. R. Crim. P. 17(b).[3] In *United States v. Hernandez-Urista*, 9 F.3d 82, 84 (10th Cir. 1993), the trial court denied a defendant's request for a subpoena because the defendant "failed to specify the content of the expected [witness's] testimony." *Id.* at 84. The Tenth Circuit held that the trial court did not abuse its discretion because the defendant did not demonstrate that the requested witness was necessary to the defense. The Circuit Court explained:

> Rule 17(b) requires that a subpoena be issued on the condition that a witness' presence is necessary to the defense. "Necessary" means "relevant, material and useful." To show necessity, a defendant must demonstrate particularized need.

Id. at 83-84. (footnote and internal citations omitted). *See also United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982) (defendant "must at least make some plausible showing of how [the witnesses'] testimony would have been both material and favorable to his defense."); *United States v. Romano*, 482 F.2d 1183, 1195 (5th Cir. 1973) ("[T]here was no need to call the witness whose testimony would not be relevant, since irrelevant testimony is per se not 'necessary to an adequate defense'"); *United States v. Becker*, 444 F.2d 510, 511 (4th Cir. 1971) (no abuse of discretion in refusing to summon a witness where, after a hearing at which the defendants proffered the testimony of the proposed witnesses, the district judge concluded evidence would be irrelevant).

Under R.M.C. 703, a party must demonstrate that the testimony or evidence sought is "relevant and necessary." R.M.C. 703(b), 703(f). This standard is taken directly from the

[3] Fed. R. Crim. P. 17(b) sets out the standard the court is to apply in ruling on a request by an indigent defendant for issuance of a witness subpoena. As described in the body of the brief, that standard is "the necessity of the witness's presence for an adequate defense." Nowhere else does Rule 17 set out a standard for the issuance of subpoenae; in subsection (a), it calls for the issuance of subpoena in blank to the parties. Nevertheless, an indigent defendant's entitlement to a witness subpoena cannot be any different, as a legal matter, than the entitlement of other defendants.

corresponding Rule for Courts-Martial 703. Consequently, the case law interpreting R.C.M. 703 is highly persuasive authority for interpreting the meaning of "necessary" in R.M.C. 703. The military courts interpreting R.C.M. 703 have said that "[r]elevant evidence is necessary when it is not cumulative and when it would contribute to a party's presentation of the case in some positive way on a matter in issue." *E.g., United States v. Lofton*, 48 M.J. 247, 248-49 (1998). Consequently, the defense in this Military Commission has a right to obtain non-cumulative evidence that would "contribute to [its] presentation of the case in some positive way." That right is at least comparable to the civilian criminal defendant's right to testimony and evidence that is "relevant, material and useful" and "favorable to the defense."

The defense argues that the requirement in R.M.C. 703 that it request witnesses and evidence, in the first instance, from the trial counsel renders the opportunity to obtain witnesses and evidence in a military commission unequal to the opportunity available in article III courts, because in article III courts the defense may issue subpoenas without involving the prosecution. That difference, however, is both illusory and merely procedural; it does not render the "opportunity to obtain" witnesses any less "comparable." In both fora, the prosecution may contest the defense's entitlement to particular witness testimony or evidence, and in both fora it is ultimately the judge who decides, on the basis of a comparable substantive standard, whether the defense has a right to the witness testimony or evidence at issue. R.M.C. 703(c)(2)(D) ("If the trial counsel contends that the witness' production is not required or protected, the matter may be submitted to the military judge, or, if prior to referral, the convening authority."); *United States v. Hardy*, 224 F.3d 752, 754-56 (8th Cir. 2000) (the prosecution may move to quash a defense subpoena, and the court would then determine if the testimony or evidence being sought was relevant and material); *United States v. Hughes,* 895 F.2d 1135, 1145 (9th Cir. 1990) (same). And in evaluating the comparability of the "opportunity to obtain" witnesses and evidence, the proper focus must be on the scope of the accused's right to particular testimony or evidence, rather than merely the quantity of testimony or evidence that the defense may seek to obtain,

without regard to whether the accused actually has any legal entitlement to such testimony or evidence.

Although in military commissions and courts-martial, a military judge will likely have the opportunity to decide whether the testimony of a contested witness is relevant at an earlier stage of the proceedings than would an article III judge confronting a prosecution motion to quash a defense trial subpoena, that procedural timing difference cannot establish that R.M.C. 703 is not "comparable" to the discovery rights that apply in article III courts. *See Williams v. Florida*, 399 U.S. 78, 85 ("At most, the rule only compelled petitioner to accelerate the timing of his disclosure [of an alibi defense], forcing him to divulge at an earlier date information that the petitioner from the beginning planned to divulge at trial. Nothing in the Fifth Amendment privilege entitles a defendant as a matter of constitutional right to await the end of the State's case before announcing the nature of his defense, any more than it entitles him to await the jury's verdict on the State's case-in-chief before deciding whether or not to take the stand himself.").[4]

[4] Moreover, sound reasons support the differences between the procedure used by military courts and those used by federal courts. Because military commissions are convened by a convening authority, the mechanics and cost of producing witnesses are the responsibility of that convening authority, and in the military experience, trial counsel are best suited to discharge these administrative tasks. *See* R.C.M. App. 21 at A23-36 ("Experience has demonstrated that these administrative tasks should be the responsibility of trial counsel."); *id.* ("Because most defense requests for witnesses are uncontested, judicial economy is served by routing the list directly to trial counsel, rather than to the military judge first. This also allows the trial counsel to consider such alternatives as offering to stipulate or take a deposition . . . ."); *see also United States v. Curtin*, 44 M.J. 439, 441 (C.A.A.F. 1996) ("[T]rial counsel's function in the context of the military justice system parallels the functions of a clerk of court of a United States District Court who issues subpoenas for that court as a ministerial act."). The defense (at 17) cites *United States v. Espinoza*, 641 F.2d 153, 158 (4th Cir. 1981) for the proposition that notifying the prosecution of defense witness requests is "constitutionally objectionable." That statement, however, is mere *dicta*, and constitutes no part of the holding of the case. The defense witness request at issue in *Espinoza* was, in fact, made *ex parte*, and not shared with the prosecution. Further, the *Espinoza* court did not actually conclude that requiring the disclosure of defense witnesses to the prosecution violated the Constitution; it merely observed in *dicta* that some objection to the pre-1966 rule on that basis had been voiced. *Id.* at 157 (stating "some asserted [the pre-1966 rule] to be constitutionally objectionable."). And the *Espinoza* court explicitly concluded that "disclosure of the theory of an indigent defendant's defense to the government" by departing from the procedure in Federal Rule of Criminal Procedure 17(b) "does not always constitute prejudicial error." *Id.* at 159.

The defense further argues (at 14-15) that complying with R.M.C. 703 by providing a synopsis of the expected testimony to the prosecution would lead to witness tampering and reveal work product and trial strategy. First, revealing a synopsis of testimony does not reveal the defense trial strategy. In article III courts, if the prosecution were to file a motion to quash, the defense would be required to proffer the expected testimony of the witness it sought produced, which would reveal at least as much as the synopsis required by R.M.C. 703. For example, in *United States v. Murphy*, No. 06 Cr. 62, 2007 WL 1289917, at *6 (W.D. Va. Apr. 30, 2007), the defendant moved to compel the testimony of certain witnesses. The court denied the motion as to some of the witnesses, because the defendant failed to show that their testimony was necessary. The defendant then filed another motion to compel, in which he argued that "he did not want to reveal his strategy by explaining why each witness was needed." The district court denied the motion, concluding that no right would be offended by requiring the defense to proffer the expected testimony in order to obtain a subpoena. *Id.* at 7. Second, the suggestion by the defense that disclosure of the identity of witnesses to the prosecution would lead to witness tampering (or murder) is both baseless and irresponsible.[5]

Finally, the defense argues (at 26) that R.M.C. 703 has a "chilling" effect on the defense, because it forces the defense to "self-censor" its advocacy in the interest of confidentiality. But the defense would be faced with the identical "chill" in federal court, where the defense would also be forced to choose between presenting a witness in open court—or proffering the relevance of a witness's testimony—and protecting the identity of that witness. To support its argument, the defense cites *Simmons v. United States*, 390 U.S. 377, 394 (1968), where the Court held that it is unconstitutional to permit the government to use a defendant's testimony at a Fourth Amendment suppression hearing against the defendant, because permitting use of such testimony at trial would chill the defendant's attempt to challenge the evidence on Fourth Amendment

[5] That an individual has been sought as a witness by the defense in a military commission prosecution is not a lawful basis for militarily targeting that individual, and it is both reckless and outrageous for the defense to suggest that the United States Government would take such action.

grounds. Here, by contrast, the prosecution is not seeking to use at trial the purported "synopsis" of witness testimony that the defense is required to provide, and in any event the synopsis contains no statement of the accused, so there is no analogous constitutional challenge to be "chilled."[6]

For these reasons, the citation by the defense of numerous capital cases for the proposition that "the prejudice infects both the findings and sentencing portion of the trial" is irrelevant. *See* AE 114 at 24 (citing cases). Because R.M.C. 703 complies with 10 U.S.C. § 494j(a)(1)'s requirement that the defense's "opportunity to obtain" witnesses and evidence must be comparable to the opportunity in an article III court, the defense motion should be denied.

B. In Enacting the 2009 M.C.A., Congress Neither Required Nor Intended to Require that Military Commissions Adopt the Procedures Found in Federal Rules of Criminal Procedure 16 and 17

In enacting the 2009 M.C.A., Congress was not writing on a blank slate. Three years earlier, it had enacted the Military Commissions Act of 2006, Pub. L. 109–366 (Oct. 17, 2006), and pursuant to that earlier statute, the Secretary of Defense had promulgated the 2007 Manual for Military Commissions (M.M.C.). That 2007 M.M.C. contained a Rule for Military Commissions 703 that, like both the current R.M.C. 703 and Rule for Courts-Martial 703, required the defense to submit requests for the compulsory production of witnesses and evidence

[6] The defense also argues (at 23) that "the earlier prosecutors are able to reach the defense mitigation witnesses, the less effective the mitigation case will be," citing a law review article by a former prosecutor, David Novak. The article actually says "that it is imperative for the prosecutor to have the investigators interview family members about the defendant's life as early in the investigation as possible." R.M.C. 703 does not change the identity of the accused's family members. The government is provided no greater or lesser ability to interview them in light of R.M.C. 703. The defense further cites Donna H. Lee, *In the Wake of Ake v. Oklahoma: An Indigent Criminal Defendant's Lack of Ex Parte Access to Expert Services*, 67 N.Y.U. L. Rev. 154, 175 (1992), but that article dealt with requests for expert witnesses, not motions to compel fact witnesses, and there the author concluded that, to qualify for constitutional protection the evidence "must present a danger of self-incrimination." *Id.* at 8. Here, the requests to produce witnesses (and motions to compel their testimony) do not disclose matters that present any danger of self-incrimination. The purpose of the testimony, as characterized by the defense itself in its requests, does not relate to any material fact in the case, nor to the charges.

to the trial counsel, in the first instance, and required the defense to demonstrate the requested witness or evidence was relevant and necessary. Absent evidence to the contrary (there is none), Congress is presumed to be aware of and knowledgeable about existing law pertinent to the legislation it enacts. *So. Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 351(1998); *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990); *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1988). Further, in this case, the attachments to the defense motion—in particular COL Masciola's letter to the Attorney General, AE 114, Att. B, and the discussion of that letter during his testimony before Congress, AE 114 at 4—establish that Congress was, in actual fact, well aware of R.M.C. 703, as it then-existed, and the defense complaints about its procedures.

Against the backdrop of R.M.C. 703, MMC (2007), which was promulgated pursuant to the 2006 M.C.A. and tracked the analogous Rule for Courts-Martial, Congress enacted the 2009 M.C.A. In that legislation, Congress again authorized the Secretary to promulgate implementing regulations, but also directed that "[e]xcept as otherwise provided in [] chapter [47A] or chapter 47 of this title, the procedures and rules of evidence applicable in trials by general courts-martial of the United States shall apply in trials by military commission under this chapter." 10 U.S.C. § 949a(a) (2009). Further, in amending section 949j(a), Congress chose not to alter any of the language in section 949j(a) of the 2006 M.C.A., but rather simply to add a single additional sentence, to wit: "The opportunity to obtain witnesses and evidence shall be comparable to the opportunity available to a criminal defendant in a court of the United States under article III of the Constitution." It is inconceivable that Congress, knowing that the then-effective R.M.C. 703 tracked the corresponding Rule for Courts-Martial, and that the bill that would become the 2009 M.C.A. explicitly directed the Secretary to apply the Rules for Courts-Martial in military commissions (absent an exception in the statutes or a clear reason to deviate), could have intended the single new sentence it was adding to section 949j(a)(1) to require the wholesale replacement of R.M.C. 703 with the procedural rules found in Federal Rules of Criminal

Procedure 17, as the defense contends.[7] Had Congress intended such a sweeping and dramatic change from historical practice, in the face of over-arching direction to the Secretary, in the very same legislation, to conform the military commission rules to the Rules for Courts-Martial, one would have expected Congress to clearly and unambiguously direct the Secretary to use the procedures found in the Federal Rules of Criminal Procedure. Clearly, it did not do so.

Further, despite having the Chief Defense Counsel's complaints about the procedural requirements of R.M.C. 703 explicitly brought to its attention by COL Masciola, Congress gave no indication it intended to require the Secretary to change that Rule. Indeed, the legislative history cited by the defense suggests Congress was concerned about an accused's substantive right to adequate resources rather than COL Masciola's procedural complaints about the operation of R.M.C. 703. By adding the additional sentence to Section 949j(a), without changing any of the pre-existing language, Congress undertook to ensure that, as a matter of substantive law, military commission accuseds would have the same right to compel the production of witness testimony and evidence as Article III defendants, *i.e.*: an entitlement to compulsory production of all relevant and necessary/material witnesses and evidence requested.

C. In Military Commissions, As In Article III Courts, the Accused Has Access to Nationwide Subpoena Power to Obtain Witnesses and Evidence

Subsection (a)(2) of section 949j, as distinct from subsection (a)(1) where the "comparable opportunity" language is found, concerns the process by which military commissions compel witnesses to appear. Pursuant to subsection (a)(2), military commissions, like Article III courts, use the nationwide subpoena power of the United States to "compel witnesses to appear and testify." *Id.* While the defense must route a request for the issuance of a subpoena through the prosecution in military commissions, which is different from the procedure

[7] The defense refers to both Fed. R. Crim. P. 16 and 17. Rule 16 deals with discovery, and its military commissions analog is R.M.C. 701. Rule 17, dealing with compulsory process for the production of witnesses and evidence, is the analog of R.M.C. 703, the rule challenged by the defense in the instant motion.

used in the Article III courts, in both fora the accused has the ability to obtain subpoenas with nationwide reach to obtain relevant witnesses and evidence.

The plain text of the M.C.A. underscores this conclusion. Subsection (a)(2) states that the "process issued" in military commissions shall be similar to that which article III courts may lawfully "issue," and "shall run" to any place where the United States has jurisdiction. 10 U.S.C. § 949j(a)(2). In choosing this language, Congress was authorizing military commissions to issue subpoenas with nationwide reach, not dictating the procedures by which the parties would obtain the issuance of subpoenas.

Furthermore, there is no right to subpoena a witness whose testimony is not relevant and necessary. R.M.C. 703 simply applies the same procedures used in courts-martial, which have been in place since at least 1969. In the final analysis, as with the Rules for Courts-Martial, this Commission ultimately decides whether a particular contested witness's testimony or piece of evidence is relevant and necessary, and if it is, the accused has the right and the means to obtain that testimony or evidence.

II. The Relief Requested By The Defense Is Inappropriate

The defense invites the Commission to usurp the role of the Secretary of Defense under the M.C.A. and to promulgate entirely new rules that are not contained in the current Rules for Military Commissions. It would, however, be improper for the military judge to rewrite the Rules and either order the Chief Prosecutor to delegate to the Chief Defense Counsel his authority to issue subpoenas for witnesses and evidence, or to create a parallel R.M.C. 703 that requires the prosecution to provide a synopsis of witness testimony to the defense. The defense-requested relief should be denied.

Further, by its requested relief, the defense implies that the roles of the government and the defense in the area of witness and evidence production are analogous. They are not. The government bears obligations and burdens for the production of witnesses and evidence which the defense does not. The government is ultimately responsible logistically for producing

witnesses. These responsibilities include but are not limited financing witness travel, producing travel orders, and arranging transportation, escorts, and housing for witnesses. This fact alone establishes that there is a rational basis for R.M.C. 703's requirement to route requests for the compulsory production of witnesses and evidence *via* the trial counsel.

7. Oral Argument

The government requests oral argument.

8. Witnesses and Evidence

The government does not anticipate relying on witnesses or evidence in support of this response.

9. Additional Information

The government has no additional information.

10. Attachments

A. Certificate of Service, dated 5 October 2012.

Respectfully submitted,

//s//

Anthony W. Mattivi
CDR Andrea Lockhart, JAGC, USN
Justin T. Sher
Joanna Baltes
Maj Chris Ruge, USMC
LT Cherie Jolly, JAGC, USN
Trial Counsel

Mark Martins
Chief Prosecutor
Military Commissions

CERTIFICATE OF SERVICE

I certify that on the 5th day of October 2012, I filed **AE 114 Government Response** To Defense Motion To Find That RMC 703 Violates 10 U.S.C. 949j(a)(1) And Mr. Nashiri's Constitutional And Statutory Rights To Due Process, with the Office of Military Commissions Trial Judiciary and served a copy on counsel of record.

//s//

Anthony W. Mattivi
Trial Counsel
Office of the Chief Prosecutor
of Military Commissions