

**MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY**

UNITED STATES OF AMERICA

v.

ABD AL-RAHIM HUSSEIN MUHAMMED  
ABDU AL-NASHIRI

AE 120

**UNCLASSIFIED NOTICE**

**DEFENSE MOTION TO COMPEL  
DISCOVERY OF INFORMATION IN THE  
POSSESSION OF ANY FOREIGN  
GOVERNMENT AND THE UNITED  
STATES RELATED THE ARREST,  
DETENTION AND INTERROGATION OF  
MR. AL-NASHIRI**

24 September 2012

In accordance with the Military Commission Trial Judiciary Rules, the defense provides this unclassified notice that it has filed a classified motion. The classified version of this motion has been filed by personal delivery to the Clerk of Court and to the prosecution.

//s//  
STEPHEN C. REYES  
LCDR, JAGC, USN  
*Detailed Defense Counsel*

//s//  
ALLISON C. DANELS, Maj, USAF  
*Assistant Detailed Defense Counsel*

//s//  
RICHARD KAMMEN  
*Civilian Learned Counsel*

**CERTIFICATE OF SERVICE**

I certify that on 24 September 2012, I electronically filed the forgoing document with the Clerk of the Court and served the forgoing on all counsel of record by e-mail.

//s//  
ALLISON C. DANELS, Maj, USAF  
*Assistant Detailed Defense Counsel*

**United States v. Abd Al-Rahim Hussayn Muhammad Al-Nashiri**  
**ISN: 010015**

## **APPELLATE EXHIBIT 120**

**Attachments A through F**  
**(Pages 23-61)**

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**APPELLATE EXHIBIT 120 is located in original  
record of trial TS/SCI Annex, located at [REDACTED]  
[REDACTED] Alexandria, VA 22332  
POC: Chief, Office of Court Administration  
[REDACTED]**

**United States v. Abd Al-Rahim Hussayn Muhammad Al-Nashiri**  
**ISN: 010015**

## **APPELLATE EXHIBIT 120**

### **Defense Motion to Compel Discovery (Pages 3-22)**

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**APPELLATE EXHIBIT 120 is located in original  
record of trial TS/SCI Annex, located at [REDACTED]  
[REDACTED] Alexandria, VA 22332  
POC: Chief, Office of Court Administration  
[REDACTED]**

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MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY

AE120

UNITED STATES OF AMERICA

v.

ABD AL-RAHIM HUSSEIN MUHAMMED  
ABDU AL-NASHIRI

DEFENSE MOTION TO COMPEL  
DISCOVERY OF INFORMATION IN THE  
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STATES RELATED TO THE ARREST,  
DETENTION, RENDITION AND  
INTERROGATION OF MR. AL-NASHIRI

24 September 2012

1. ~~(U)~~ **Timeliness:** This request is filed within the timeframe established by Rule for Military Commission (R.M.C.) 905.
2. ~~(U)~~ **Relief Requested:** The Defense respectfully requests this Commission order the government to provide Defense with information related to Mr. Al-Nashiri's detention, rendition and interrogation in all CIA secret facilities [hereafter blacksites] in any location. Specifically, the Defense requests the following:
  - a. ~~(TS)~~ [REDACTED] ~~(NF)~~ All materials in the government's possession relating to the planning for and transfer of Mr. Al-Nashiri to and from any CIA blacksite, including, but not limited to, reproductions of all documents, recordings, communications, plans, lists of personnel either employed by or working with the U.S. government, weapons or other force protection measures employed, the names of and contact information of foreign personnel and agreements with their host governments authorizing their participation.
  - b. ~~(TS)~~ [REDACTED] ~~(NF)~~ All personnel documents relating to the staff, lawyers, medical and mental health personnel and administrators while Mr. Al-Nashiri was in a CIA

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blacksite in any foreign nation. This includes, but is not limited to, all documents related to the staffing, organization and administration of the RDI program in any foreign nation that hosted a CIA blacksite.

c. (~~TS~~ [REDACTED] ~~NF~~) Any and all documents, records, communications and reports in possession of a foreign country that served as a transit point or host to any facility that can be requested through the Treaty on Mutual Assistance in Criminal Matters.

d. (~~TS~~ [REDACTED] ~~NF~~) The names, contact information, position, and dates of employment of any individual involved in the interrogation, transportation or detention of Mr. Al-Nashiri in foreign nation that hosted a CIA blacksite. This includes any employment records, disciplinary records, records of complaints made by or against these employees, and training records of these employees.

e. (~~U~~) All statements obtained from interrogations, summary of interrogations, reports produced from interrogations, interrogation plans, interrogation logs, and agents notes of Mr. Al-Nashiri or any other co-conspirator, named or unnamed.

f. (~~TS~~ [REDACTED] ~~NF~~) A list of ALL companies and contractors including, but not limited to builders, utility providers, audio and video service providers, maintenance and cleaning service providers, and the terms of any agreements with third parties, foreign or domestic, private or governmental with whom the government contracted with to support the interrogation, transportation or detention of Mr. Al-Nashiri while in any CIA blacksite.

g. ALL information requested in Defense's 75-line item discovery request for information related to the CIA's rendition, detention and interrogation program. *See* Defense Request for Discovery (RDI Program), dated 9 Aug 2012 (Attachment A). The prosecution declined production of all 75 line items except items 3, 14, 20, 27-34, 44-46, 70a, 70d, and 73.

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See Government Response to Defense Request for Discovery, dated 11 September 2011  
(Attachment B).

h. ~~(TS [REDACTED] NF)~~ If the government claims it is not currently in possession of the requested information the Commission asks that it be ordered to seek production of the requested information from the government of any and every foreign nation that hosted a CIA blacksite.

3. ~~(TS [REDACTED] NF)~~ **Overview:** While possible, it is unlikely a blacksite existed in any foreign nation without the knowledge and cooperation of government official or agencies operating on their behalf. Accordingly the information the defense seeks is in the possession of the United States and the foreign countries where CIA black sites were located.

4. ~~(TS [REDACTED] NF)~~ **Burden of Proof and Persuasion:** (U) As the moving party, the defense bears the burden of persuasion as to any factual issues relevant to the disposition of this motion, which it must demonstrate by a preponderance of the evidence. R.M.C. 905(c).

5. ~~(TS [REDACTED] NF)~~ **Facts:**

**CIA Develops the Rendition Detention and Interrogation Program**

~~(TS [REDACTED] NF)~~ Shortly after the September 11, 2001 attacks in New York and Washington, DC, the CIA began operation of its rendition, detention and interrogation program. As a part of this program, the CIA assumed a role for which it was unfamiliar and ill-prepared—jailer and interrogator “for terrorism suspects. [REDACTED]

[REDACTED]

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~~(TS// [REDACTED] (NF))~~ President Bush's speech also indicated that Mr. Al-Nashiri was among those detained in the CIA illegal rendition, detention and interrogation.<sup>1</sup> *Ibid.* Mr. Nashiri was secretly held ~~[REDACTED]~~ when he was kidnapped in the United Arab Emirates (Dubai) by local authorities until he was officially transferred to Guantanamo Bay (GTMO). During his time in CIA custody, Mr. Al-Nashiri was held incommunicado in secret detention facilities in various foreign nations where he was subject to illegal, torturous, inhumane and degrading treatment by agents of the United States government.

~~(TS// [REDACTED] (NF))~~ Mr. Al-Nashiri officially resurfaced at Guantanamo Bay (GTMO) in September of 2006 where he has been for the last six years awaiting trial. Mr. Al-

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<sup>1</sup> In his speech, President Bush stated that among those held are "the key architects of {911 attacks} and attacks on the USS Cole; an operative involved in the bombings of our embassies in Kenya and Tanzania; and individuals involved in other attacks that have taken the lives of innocent civilians across the world. Mr. Nashiri faces capital charges for his alleged role as the mastermind of the USS Cole attack and conspiracy for his alleged role in the East African embassy bombings.

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Nashiri's exact whereabouts prior to his transfer to GTMO has never been officially released by the United States government.<sup>2</sup> [REDACTED]

[REDACTED]

Mr. Nashiri Torture In the CIA's RDI Program

(TS/ [REDACTED] /NF) [REDACTED]

[REDACTED] The Government officially confirmed that “[b]y November 2002, the Agency had...Abd Rahim Al-Nashiri in custody.” CIA Inspector General Special Review, *Counterterrorism Detention and Interrogation Activities (September 2001-October 2003)* ¶7 (7 May 2004) (declassified version).

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<sup>2</sup> While the exact location of Mr. Nashiri's detention has not been officially released and remains classified at the high level, Defense has been able to piece together where he was detain and the possible dates of detention using numerous open sources. These include news articles, books and other documents developed through extensive research and investigations conducted by individuals across the globe who are dedicated to bringing to light the United States government's torture of Mr. Al-Nashiri and other terrorism suspects.

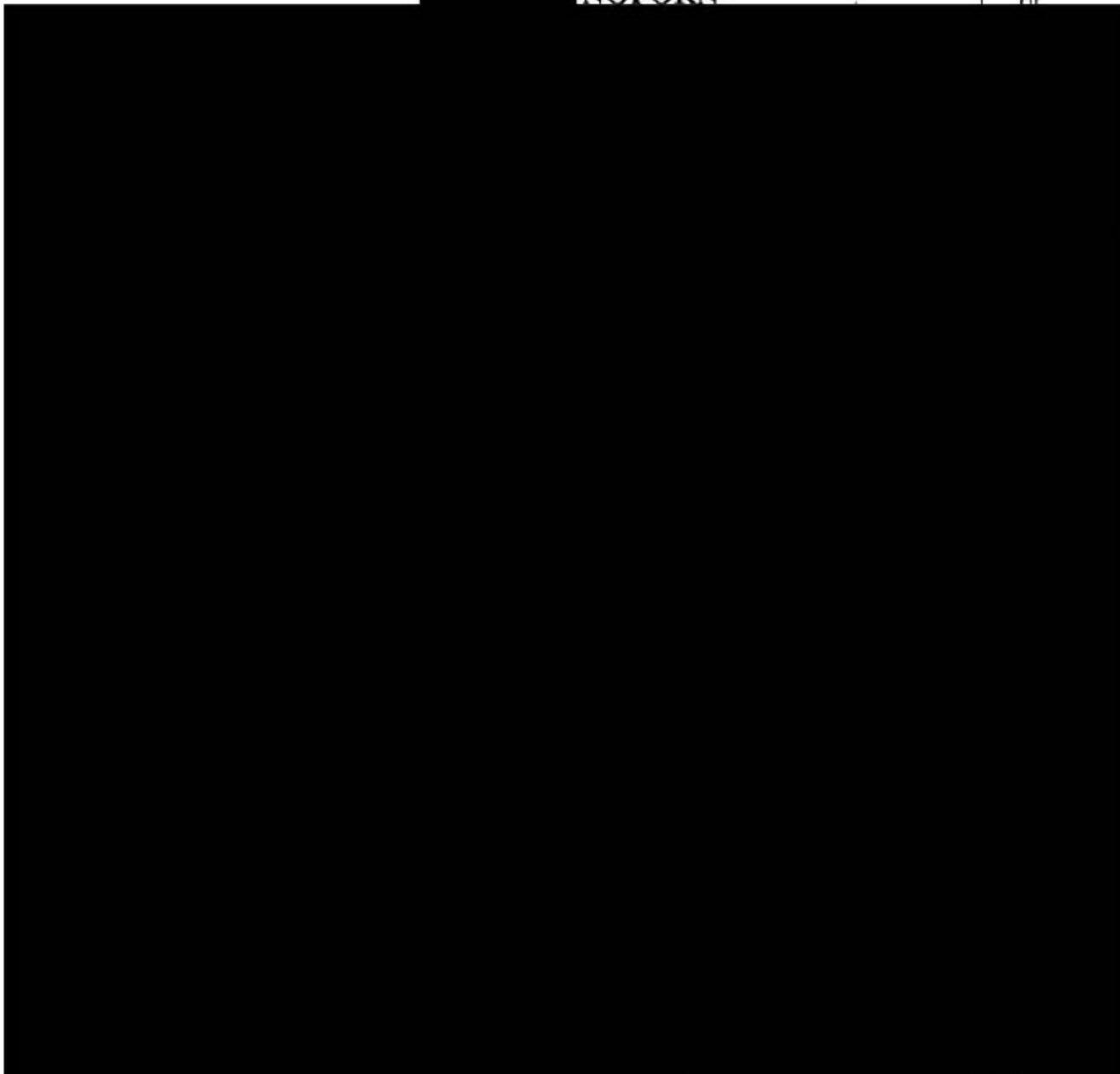
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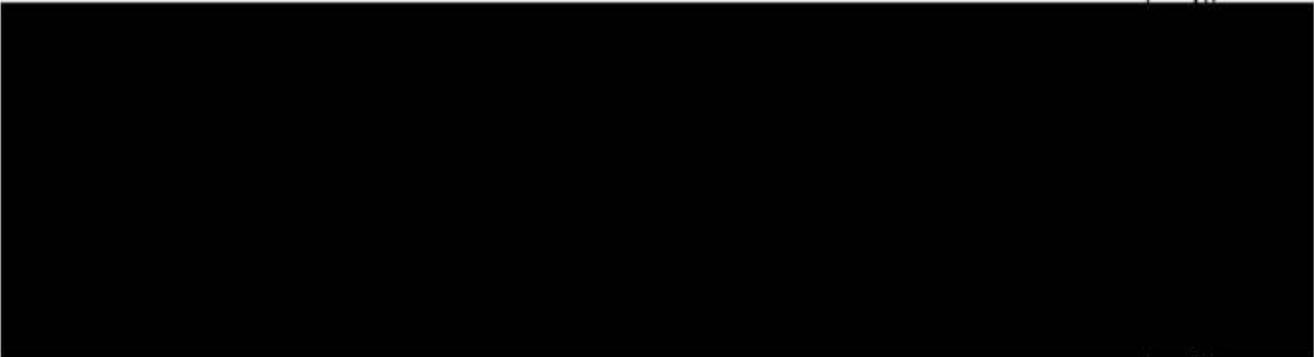
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During at least one interrogation



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Nashiri was hooded and handcuffed while a government agent threatened him with a semi-automatic handgun. CIA OIG Report, at ¶92<sup>15</sup> At this time, and while Mr. Al-Nashiri was shackled, the interrogator racked the handgun “once or twice close to Al-Nashiri’s head.” *Ibid.* Further, a government agent threatened Mr. Al-Nashiri with a power drill while he [Mr. Al-Nashiri] stood naked and hooded.

On one occasion, there was “concern that [Mr.] Al-Nashiri’s arms might be dislocated from his shoulders...the interrogators were attempting to put [Mr.] Al-Nashiri in a standing stress position. Mr. Al-Nashiri was reportedly lifted off the floor by his arms while his arms were bound behind his back with a belt.” *Id.* at ¶97. Lastly, an interrogator reported that he witnessed two unapproved techniques used on Mr. Al-Nashiri—the use of a stiff brush to induce pain and standing on Mr. Al-Nashiri’s shackles which resulted in cuts and bruises. *Id.* at ¶98.

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<sup>15</sup> The report confirms that this incident occurred sometime between 28 December 2002 and 1 January 2003.

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[REDACTED]

(TS// [REDACTED] (AU)) In addition to the officially released information, Mr. Al-

Nashiri was subjected too much worse treatment. [REDACTED]

[REDACTED]

The Government's Refusal to Provide Information Requested By the Defense

Related to the RDI

On 8 May 2012, Defense requested from trial counsel discovery related to Mr. Al-

Nashiri's detention [REDACTED]

[REDACTED]

The government declined production of the requested information regarding both requests. *See*

[REDACTED]

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Government Response to Defense Supplemental Discovery Request, dated 11 Jun 2012 (Attachment E). In response to the government's denial, Defense filed motion to compel production of the information [REDACTED] AE088 and AE089 respectively. The motions were scheduled to be argued during the 16 – 19 June 2012 hearing. However, both parties agreed to defer argument until the next hearing.

On 12 June 2012, the Defense submitted a request for discovery [REDACTED]

[REDACTED] The government has never responded to this discovery request. On 9 August 2012, Defense submitted a discovery request for information related to the CIA's rendition, detention and interrogation program (*See* Attachment A)., The government declined production of the requested information. (*See* Attachment B).

6. ~~(TS)~~ [REDACTED] ~~(NF)~~ Argument:

a. ~~(TS)~~ [REDACTED] ~~(NF)~~ The CIA's RDI program was designed to exploit the totality of the detainee's experience by using physical and psychological stressor to exaggerate that experience.

~~(U)~~ Long before the advent of this program, the CIA recognized that—successful interrogation involves a continuum of process—the totality of the subject's circumstances—and that “everything that takes place in the continuum influences all subsequent events.”<sup>19</sup> At the black sites, the CIA implemented a comprehensive system of interrogation and detention which used the totality of the detainee's experience to amplify the effects of individual physical and

<sup>19</sup> CIA, *KUBARK Counterintelligence Interrogation* 41 ( July 1963) available at <http://www.gwu.edu/%Ensarchiv/NSAEBB/NSAEBB122/cia%20Kubark%201-60.pdf>, <http://www.gwu.edu/%Ensarchiv/NSAEBB/NSAEBB122/cia%20Kubark%2061-112.pdf> and <http://www.gwu.edu/%Ensarchiv/NSAEBB/NSAEBB122/cia%20Kubark%20113-128.pdf>.

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psychological stressors. See CIA, *Background Paper on CIA's Combined Use of Interrogation Techniques* 17 (Dec. 30, 2004) [hereinafter *Background Paper on Combined Techniques*] available at <http://www.aclu.org/torturefoia/released/082409/olcremand/2004olc97.pdf>. In the CIA's view,

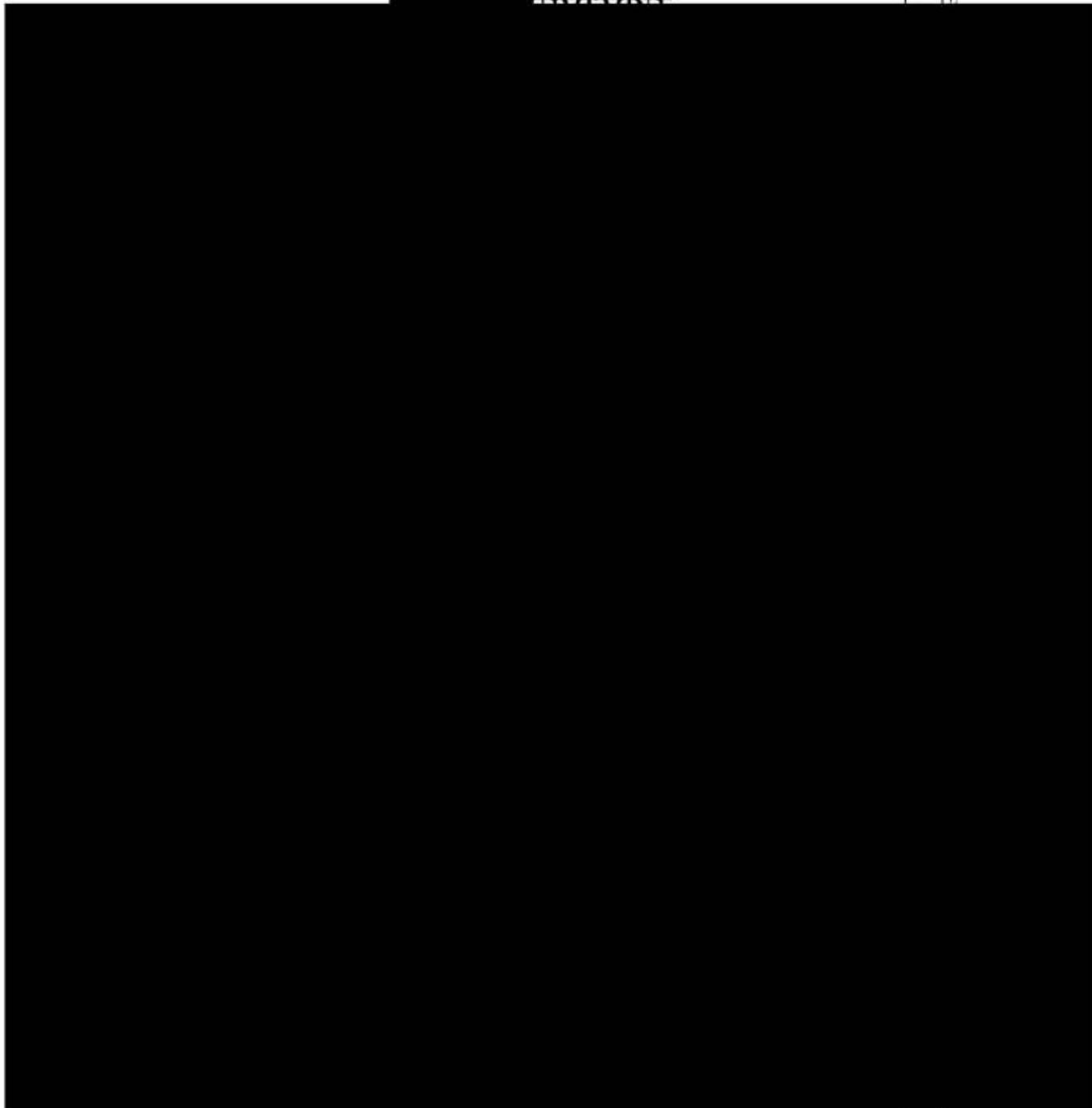
Effective interrogation is based on the concept of using both physical and psychological pressures in a comprehensive, systematic, and cumulative manner to influence HVD behavior, to overcome a detainee's resistance posture. The goal of interrogation is to create a state of learned helplessness and dependence conducive to the collection of intelligence in a predictable, reliable, and sustainable manner. *Id.* at 1

(TS, [REDACTED] NF) Although wrong about many things, the CIA was correct that every aspect of a torture victim's experience combines into a totality which is more than the sum of its parts. Those who created and maintained the black sites understood the fundamental principle that —aggressive interrogation techniques or detention procedures involving deprivation of basic needs, exposure to aversive environmental conditions, forced stress positions, hooding or blindfolding, isolation, restriction of movement, forced nudity, threats, humiliating treatment, and other psychological manipulations conducive to anxiety, fear, and helplessness in the detainee do not seem to be substantially different from physical torture in terms of the extent of mental suffering they cause, the underlying mechanisms of traumatic stress, and their long-term traumatic effects. See, e.g., Metin Basoglu, Maria Livanou & Cvetana Crnobaric, *Torture vs Other Cruel, Inhuman, and Degrading Treatment: Is the Distinction Real or Apparent?*, 64 *Archives Gen. Psychiatry* 277, 284 (2007).

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b. (U) The Defense is entitled to the requested in this death penalty case because evidence that Mr. Nashiri or any potential witness was tortured in the CIA's RDI program is mitigating and could persuade perspective member's finding that a sentence less than death is appropriate.

(U) In defining mitigation evidence, the Supreme Court has spoken in the "most expansive terms." *Tennard v. Dretke*, 542 U.S. 274, 284 (2004) (citing *McKoy v. North*

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*Carolina*, 494 U.S. 433, 440-41 (1990)). “[A] State cannot preclude the sentence from considering ‘any relevant mitigating evidence’ that the defendant proffers in support of a sentence less than death. . . . Virtually no limits are placed on the relevant mitigating evidence a capital defendant may introduce concerning his own circumstances.” *Payne v. Tennessee*, 501 U.S. 808, 822 (1991).

This expansive view on the scope of mitigation evidence is mirrored in RMC 1004(b)3: “The accused shall be given broad latitude to present evidence in extenuation and mitigation.”

Moreover, the Army Court of Criminal Appeals described the increased duty that defense counsel have in capital cases to investigate potentially mitigating evidence:

[RCM 1004(b)(3)] allows trial defense counsel a wide range of options regarding sentencing evidence. Concomitantly, it imposes a greater burden to discover, investigate, analyze, evaluate, and present extenuating and mitigating evidence on behalf of a client facing a capital sentence.

~~(U)~~ The torture, and other illegal cruel inhumane and degrading treatment inflicted upon Ms. Al-Nashiri that the government has admitted, is hardly the full picture of torture that occurred. The government has yet to fully disclose the information obtained at the overseas location. If the government provides Defense with full and specific discovery then this may unlock a myriad of issues—*e.g.*, other evidence of abuse or additional areas warranting further mitigation investigation. Nevertheless, Defense has an obligation to conduct its own mitigation investigation, and it cannot do a proper investigation without the requested information. Moreover, the defense must also be able to investigate Mr. Al-Nashiri’s claim of torture and to establish a corroborating case. If produced, the requested information can provide substantial corroboration to Mr. Al-Nashiri’s claims.

~~(U)~~ Further, as an integral part of the mitigation investigation, Defense must be able to interview those who witnessed firsthand the torture inflicted upon Mr. Al-Nashiri. It is one thing

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to hear an account of torture from the victim, but quite another to hear it from a third party who witnessed it and can provide details and impressions that a victim of torture or a piece of paper could not. Accordingly, Defense needs the names and information related to the individuals who were present during Mr. Al-Nashiri's time while in CIA custody.

(U) Overall, the fact that Mr. Al-Nashiri was held in repugnant conditions of confinement is relevant to a member's exercise of his or her individual moral judgment on the appropriateness of a sentence, and it is the defendants' duty to develop a substantiating case for any such claims. *See, e.g., United States v. Suzuki*, 14 M.J. 491, 493 (C.M.A. 1983); *see, e.g., Rule for Courts-Martial 305(k)* (recognizing that the military judge may order confinement credit for unusually harsh circumstances). The *Suzuki* case and the corresponding RMC 305k rule recognize that the conditions in which a defendant is held in has bearing on the appropriateness of the sentence the government can impose. Here, the government designed an overseas program to inflict as much physical and mental harm on high level terrorism suspects as possible. The defense must be able to demonstrate to the members the full extent and circumstances of this conduct and argue that these unusually harsh circumstances justify a sentence less than death.

c. (TS) ~~TOP SECRET~~ (S) Evidence relating to the defendants' pretrial incarceration is admissible because it demonstrates the defendant's lack of future dangerousness and his adjustment to prison under *Skipper v. South Carolina*.

(U) Jurors considering whether to put a person to death often consider whether he will be a danger to others during a sentence of incarceration. This is known as future dangerousness. Evidence of how the defendant was treated and his ability to manage that treatment without assaulting guards or agents is relevant and admissible on this issue. However to develop this evidence the defense needs the requested information.

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(U) Additionally, the defense is allowed, indeed obligated, to present evidence admissible under *Skipper v. South Carolina*, 476 U.S. 1 (1986), which is about the defendant's adjustment to jail. Typically, this evidence comes from guards and jail officials who interacted with a defendant during his incarceration. Additionally it is common to have experts review the defendant's incarceration records and render an opinion as to his/her adjustment to jail. Much of the evidence requested will allow the defendant to obtain this evidence. Every agent who detained Mr. Al-Nashiri, every official who approved any facet of his detention or torture, every interrogator who slapped, hit or otherwise tortured Mr. Al-Nashiri is a potential witness.

(TS) ~~(NF)~~ Everyplace the defendant was held after his arrest, from Dubai to Guantanamo, every flight, truck, car or black site where he was held is a part of his record of incarceration. The members have a right and the defense has an obligation to present the details of the defendant's confinement, not just the fact of the confinement. Only with the details can the members assess the true scope of the defendant's adjustment to prison. However, this is more than a simple statement that the defendant was in this or that jail. What were the conditions? Who were his jailers? How did he act? How was he treated? How did he respond to that treatment? Did he respond with anger and force, or with compliance? The answers to all of these questions and more are possible and appropriate subjects of testimony.

(U) Yet, to investigate and obtain this testimony the defense needs the underlying information. In a typical case, the defense could easily locate and interview the defendant's jailers. Here, to do the same the defense needs the underlying information, the where, when, and who of his time in the CIA RDI program.

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d. ~~(U)~~ The Defense has an obligation to conduct a complete and thorough mitigation investigation, which bears on the determination of counsel's effectiveness in representing Mr. Al-Nashiri.

~~(U)~~ The Supreme Court has acknowledged that the ABA Guidelines establish the "prevailing norms of practice" that serve to measure counsel's level of effectiveness under the Sixth Amendment. Those "[g]uidelines provide that investigation into mitigating evidence 'should comprise efforts to discover *all reasonably available* mitigating evidence...' ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Case 11.4.1(c), pg 93 (1989) (emphasis added)." See *Wiggins v. Smith*, 539, US 510, 524, (2003). Indeed, death penalty cases have been overturned based on counsel's failure to conduct an adequate mitigation investigation and presentation of evidence in mitigation. See *Strickland v. Washington*, 466 US 668 (1984), see also *Williams v. Taylor*, 529 US 362 (2000), *Rompilla v. Beard*, 545 US 374 (2005). All these cases involved counsel's deficient performance in the area of mitigation.

~~(U)~~ Mr. Al-Nashiri faces the prospect of being put to death by the United States; therefore, the Defense has a responsibility to conduct a comprehensive sentencing investigation and to discover any potential mitigation evidence. See American Bar Association, Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Guideline 10.7 (2003). There is little doubt that these black sites contain mitigation evidence of the highest order. Despite the assistance of a mitigation specialist appointed to assist the Defense with the development of its mitigation case, the ultimate responsibility to ensure a thorough investigation of potential mitigation evidence lies with defense counsel.

~~(U)~~ Here, torture occurred in an overseas location. For example, the government fully admits to waterboarding both Mr. al Nashiri at the overseas location. Moreover, in one overseas location, the government admits that an agent threatened to kill Mr. al Nashiri using a power drill

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and handgun and threatened to have Mr. al Nashiri's mother raped. The simple fact that the United States intentionally inflicted torturous treatment Mr. Nashiri is *per se* mitigating and thus the defense has a significant burden to discover, investigate, analyze, and evaluate the circumstances surrounding their torture. *See Williams v. Taylor*, 529 U.S. 362, 395-96 (2000) *United States v. Curtis*, 46 M.J. 129, 130 (C.A.A.F. 1997); *United States v. Murphy*, 50 M.J. 4, 9 (C.A.A.F. 1998).

e. ~~(TS)~~ ~~(NF)~~ **The Defense is entitled to the requested information because it evidence that a potential government witness was tortured in the CIA's RDI program goes to the credibility of that witness' statement(s).**

~~(U)~~ It is likely that the government may introduce statements from one or more of the high value detainees currently held in Guantanamo Bay. If so, the commission must find that the "totality of circumstances" renders those statements reliable and voluntary. In conducting this analysis, it is important for the commission to understand the specifics surrounding the taking of those statements. But even if these statements were taken by a so-called "clean team," the commission must be able to view those "clean team" statements in their proper perspective with the appropriate history.

~~(U)~~ Even if these statements are deemed admissible, the defense must nonetheless demonstrate to the members why those statements should not be trusted. Demonstrating to the judge the legal reasons for admitting a statement is a far different process than proving to the members why statements obtained from tortured victims should be viewed with suspicion. The latter process extends beyond a mere legal analysis and delves instead into common sense and individual judgment. In that realm, a number of conclusions can be made by seeing and hearing things with a person's own eyes and ears as opposed to viewing a picture.

~~(U)~~ Furthermore, there is reason to believe that the government in its case-in-chief will

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attempt to introduce the testimony of at least at least one witness who was detained in the CIA RDI program. If this is so, the defense has the obligation to attempt to exclude the testimony and to impeach such a witness during cross-examination, if he testifies. This impeachment may include questions relating to the overseas location.

(TS/ [REDACTED] NF) The Government cannot be allowed to withhold information related to Mr. Al-Nashiri's detention and torture in blacksites. The inhumane treatment Mr. Al-Nashiri sustained in these blacksites is one of the many areas of mitigation the defense must independently investigate to meet the standard of care in this capital case. Moreover, should the prosecution seek to offer any statements of Mr. Al-Nashiri's or any other individual detained in the CIA torture program, this information bears upon the admissibility of those statements. Accordingly, it is imperative that the defense receive information related to the conditions of his confinement and torture, as well as, the personnel who may have witnessed those conditions or acts of torture. The discovery requests that the defense submitted merely goes to the heart of these areas.<sup>20</sup>

[REDACTED]

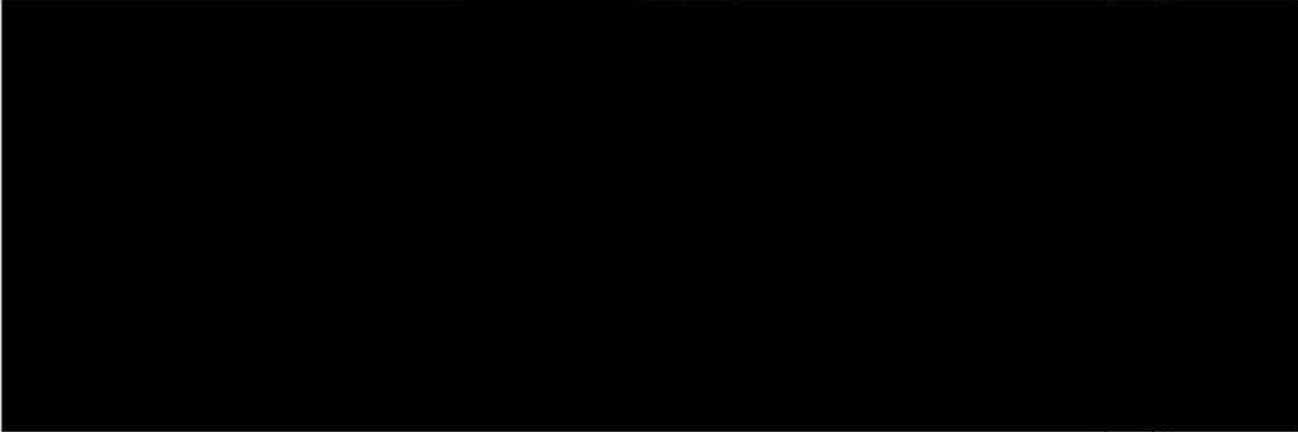
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~~(U)~~ Denial of this motion will significantly impair Defense's ability to fulfill its obligation to conduct a thorough investigation into mitigation evidence; it would essentially render defense ineffective in its representation of Mr. Al-Nashiri. Denial will also violate the defendant's rights guaranteed by the Fifth, Sixth and Eighth amendments to the Constitution of the United States of America, the MCA of 2009, the Detainee Treatment Act of 2005, treaty obligations of the United States and fundamental fairness.

7. ~~(U)~~ **Oral Argument:** Requested

8. ~~(U)~~ **Witnesses:**



9. ~~(U)~~ **Conference with Opposing Counsel:** The Defense has conferred with the prosecution.

10. ~~(U)~~ **List of Attachments:**

- A. Defense Request for Discovery (RDI Program), dated 9 August 2012 (8 pages)
- B. Government Response to Defense Request for Discovery, dated 11 September 2011 (17 pages)



- E. Government Response to Defense Supplemental Discovery Request, dated 11 June 2012 (2 pages)



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/s/ Richard Kammen  
RICHARD KAMMEN  
*DOD Appointed Learned Counsel*

/s/ Stephen Reyes  
STEPHEN C. REYES,  
LCDR, JAGC, USN  
*Detailed Defense Counsel*

/s/ Allison Danels  
ALLISON C. DANELS, Maj, USAF  
*Assistant Detailed Defense Counsel*

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**CERTIFICATE OF SERVICE**

I certify that on 24 September 2012, I hand-delivered the forgoing document to the Clerk of the Court and served a copy on all counsel of record.

/s/ Allison Danels  
ALLISON C. DANELS, Maj, USAF  
*Assistant Detailed Defense Counsel*

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# ATTACHMENT

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**DEPARTMENT OF DEFENSE  
OFFICE OF THE CHIEF DEFENSE COUNSEL  
1620 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1620**

9 August 2012

MEMORANDUM FOR Trial Counsel

FROM: Maj Allison C. Danels, Assistant Detailed Defense Counsel

SUBJECT: DEFENSE REQUEST FOR DISCOVERY (RDI Program)

The Defense respectfully requests the following:

1. A list of, and copies in unredacted form, of all Presidential directives and White House documents concerning authorization for and scope of the CIA's powers to apprehend, detain and interrogate terrorism suspects, including communications about specific detainees, specific interrogations, and use of specific techniques from 2001 through 2006.<sup>1</sup>
2. All Records associated with White House approval of interrogation techniques, including approval documents and records of CIA briefings for members of the National Security Council (NSC) and other senior Administration officials.
3. All White House cables and other communications concerning specific interrogation sessions of Mr. Al-Nashiri.
4. An unredacted copy of an (undated) Presidential memorandum that the US Government admits authorized setting up detention facilities outside the United States and/or outlined interrogation techniques that may be used against detainees, to include Mr. Al-Nashiri.<sup>2</sup>
5. Copies of any written legal analysis or advice from the Office of Legal Counsel of the U.S. DOJ [OLC] concerning the CIA RDI program and/or so called Enhanced Interrogation Techniques [EIT's].
6. Records of oral advice from OLC concerning the CIA RDI program and/or so called Enhanced Interrogation Techniques [EIT's].
7. Written and oral information about the program that CIA provided to OLC to facilitate production of OLC memoranda.

<sup>1</sup> As used here, "directive" means any form of written instruction or authorization from the President, including but not limited to new or amended Presidential Decision Directives, findings, signing statements, memoranda, and records of verbal directives.

<sup>2</sup> [http://www.aclu.org/files/pdfs/natsec/20070105\\_Dorn\\_Declaration\\_8.pdf](http://www.aclu.org/files/pdfs/natsec/20070105_Dorn_Declaration_8.pdf)

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8. All documentation, notes, notations or memoranda demonstrating whether, and during what time frame, the CIA considered each piece of OLC analysis or advice to apply to Mr. Al-Nashiri.
9. Records of other assessments by any other agency of the United States Government as to whether coercive interrogation methods were effective, necessary or legal.
10. Names and organizational relationships of the operational and supervisory components of the CIA including, but not limited to, real and covername, nationality, title and rank, to include designation as a contractor, contact information, the governmental component which the individual was associated, nature and dates of association, and duty station during those dates of association; Including, but not limited to, the following components within the CIA:
  - a. Identify the two psychologists with SERE experience serving on-site during interrogation of Mr. Al-Nashiri.
  - b. Identify all other personnel who counseled the CIA about use of enhanced interrogation techniques prior to September 11, 2001
  - c. Identify all personnel working in the CIA's Office of Medical Services ("OMS") between December 2002 and September 2006.
  - d. Identify all on-scene personnel during any interrogation of Mr. Al-Nashiri.
11. Provide the list of "new and aggressive" interrogation techniques developed for the CIA in late 2001 or early 2002 by former SERE psychologists.<sup>3</sup>
12. Provide a list of all operational and/or legal guidance for the CTC rendition, detention and interrogation program for HVDs, whether formal or *ad hoc*.
13. Provide an unredacted copy of the CIA Deputy Director of Operations ("DDO") guidance on the standards for the capture of terrorist targets.<sup>4</sup>
14. Confirm which interrogation techniques, and their parameters for use singly or in combination, were approved for use by interrogators during all interrogations of Mr. Al-Nashiri, including but not limited to those considered "standard", "enhanced", and/or "permissible."
15. Confirm the standards for treatment associated with conditions of confinement or detention, or with force protection, that were applicable at any time between December 2002 and September 2006.
16. Provide any *ad hoc* operational and/or legal guidance for interrogation and confinement issued by any agency or any Governmental official to the CIA or any officer through January 2003.

<sup>3</sup> CIA OIG Special Review (May 7, 2004), at para. 32; OLC Interrogation of al Qaeda Operative (August 1, 2002) (describing a plan provided to the CIA by a SERE psychologist).

<sup>4</sup> Cited in CIA OIG Special Review (May 7, 2004), at para. 49. Based on the content and organization of the paragraphs in this chapter of the CIA OIG Special Review (May 7, 2004), it is likely that para. 52-56, which are redacted in the version of the review made public in August 2009, address the sufficiency of this guidance and related matters.

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17. All other CIA guidelines on confinement conditions for CIA detainees, and associated materials not otherwise covered by other defense requests.
18. Any "internal Directorate of Operations guidance relating to the conduct of interrogations."<sup>5</sup>
19. A Memorandum for Record (MFR) concerning the "endgame" plan for detainees held by the CIA created by various agencies of the United States Government including but not limited to the CIA, the DOJ, the White House, the NSC and the DOD.<sup>6</sup>
20. The "OTS Report" (late 2001- early 2002).<sup>7</sup>
21. All operative<sup>8</sup> versions of any medical guidelines used by medical and/or psychological personnel monitoring and/or administering interrogations, including all versions of OMS Guidelines. This request includes, but is not limited to:
- a. copies of the guidelines;
  - b. the dates during which the guidelines were operational;
  - c. identification of persons promulgating the guidelines, and to whom they applied; and
  - d. records of transmittal, receipt, approval, acknowledgement, dissemination and retention of the guidelines.
22. Guidelines for "minimum" or "basic" levels of health care that were to be provided to detainees in CIA custody between 2002 and 2006.
23. A description of the factual basis for CIA medical personnel knowledge or "experience" with the use of specific coercive interrogation techniques.
24. All training materials for CIA personnel interrogating or debriefing detainees.
25. All Guidelines for screening of CIA personnel directly engaged in interrogation of detainees, including from the medical, psychological and security standpoints.<sup>9</sup>

<sup>5</sup> *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1.

<sup>6</sup> CIA OIG Special Review (May 7, 2004), at FN 83

<sup>7</sup> CIA OIG Special Review (May 7, 2004), at para. 33-44 (describing OTS role); see also id. at FN 26 (citing to "OTS Report")

<sup>8</sup> "Operative": if personnel conducting operations relied upon the document for guidance, it makes no difference whether it was labeled "draft" or "final".

<sup>9</sup> *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2 ("The Director, DCI Counterterrorist Center shall ensure that all personnel directly engaged in the interrogation of persons detained pursuant to the authorities set forth in [redacted] [redacted] have been appropriately screened (from the medical, psychological and security standpoints), have reviewed these Guidelines, have received appropriate training in their implementation, and have completed the attached Acknowledgement"). There may or may not have been requirements for screening prior to this January 2003 guidance.

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26. All Records relating to OMS's assessment of the relevance of SERE psychologists' expertise "on the waterboard."<sup>10</sup>
27. All guidance concerning use of "improvised" interrogation techniques or use of any technique other than specifically identified interrogation techniques provided to any CIA operative or other interrogator who participated in any interrogation of Mr. Al-Nashiri.
28. Any and all guidance from late December 2002 until September 2006 reducing the period for "standard technique" sleep deprivation from 72 to 48 hours, and the basis for the decision to make this change.<sup>11</sup>
29. A cable created and sent pre-February 2003 documenting the use of manipulation of the environment.<sup>12</sup>
30. All logistical records of Mr. Al-Nashiri's transportation between detention sites, including stopovers.
31. A description of all equipment and/or implements used in detainee's transportation between sites, his detention and interrogation.
32. Complete contemporaneous records of each interrogation session, including videotapes, audiotapes, and transcripts of interrogations of Mr. Al-Nashiri or any witness who may be called by the prosecution or whose statement the prosecution may seek to offer.
33. A description of the contents of the 92 tapes destroyed by the CIA allegedly prepared by a CIA lawyer.<sup>13</sup>
34. All Intelligence reports describing information obtained from interrogations of Mr. Al-Nashiri.
35. All interrogators' and observers' notes of interrogations of the accused or any individual interrogated by the CIA or DOD who may be called by the prosecution or whose statement the prosecution may seek to offer
36. All records of medical and psychological exams administered to Mr. Al-Nashiri prior to removal of Mr. Al-Nashiri to sites of interrogation.

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<sup>10</sup> "OMS contends that the expertise of the SERE psychologist/interrogators on the waterboard was probably misrepresented at the time, as the SERE waterboard experience is so different from the subsequent Agency usage as to make it almost irrelevant. Consequently, according to OMS, there was no *a priori* reason to believe that applying the waterboard with the frequency and intensity with which it was used by the psychologist/interrogators was either efficacious or medically safe." *CIA OIG Special Review (May 7, 2004)*, at 21 n.26, quoted by *OLC Interrogation Techniques (May 10, 2005)*, at FN 51.

<sup>11</sup> See *CIA OIG Special Review (May 7, 2004)*, at FN 34.

<sup>12</sup> See *CIA OIG Special Review (May 7, 2004)*, at para. 185.

<sup>13</sup> An unknown CIA OGC attorney reviewed tapes (*CIA OIG Special Review (May 7, 2004)*, at para. 77) and unknown investigators from CIA OIG reviewed tapes (*CIA OIG Special Review (May 7, 2004)*, at para. 78; *OPR Report (July 29, 2009)* at 83).

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37. All records of medical intake examinations, and medical examinations of Mr. Al-Nashiri whether or not they included a pre-EIT evaluation.
38. Records of medical and psychological treatment provided to Mr. Al-Nashiri or to any witness interrogated by the CIA and/or DOD who may be called by the prosecution or whose statement the prosecution may seek to offer.
39. All information about Mr. Al-Nashiri's medical status, background, etc. and treatment in detention and interrogation given to and/or used by medical personnel treating or evaluating him.
40. Records of analysis of Mr. Al-Nashiri's blood and/or saliva to determine levels of stress hormones such as cortisol, testosterone, adrenaline and neuropeptide-Y.
41. All "evaluations" of "learned helplessness" including but not limited to those pertaining to Mr. Al-Nashiri.
42. "Environmental and other considerations, as well as particularized considerations affecting any given Detention Facility" affecting compliance with DCI 2003 Confinement Guidelines vis a vis Mr. Al-Nashiri.<sup>14</sup>
43. Identity of all "Responsible CIA Officers" responsible for each specific detention facility where Mr. Al-Nashiri was held, as noted by *2003 DCI Confinement Guidelines*; identity of person in analogous role prior to issuance of *2003 DCI Confinement Guidelines*.<sup>15</sup>
44. All records of the administration of sedatives to Mr. Al-Nashiri during transport, interrogation, or any other time.<sup>16</sup>
45. Any records indicating Mr. Al-Nashiri's subjective belief that he was in physical danger, of death or otherwise; Any records indicating Mr. Al-Nashiri's subjective belief that another person was in physical danger, of death or otherwise, including but not limited to a family member or another detainee
46. Any indication Mr. Al-Nashiri was subject to "hard takedown," or that "hard takedown" was used at his detention site contemporaneous with his detention.<sup>17</sup>

<sup>14</sup> *DCI Confinement Guidelines (Jan. 28, 2003)*, at 1.

<sup>15</sup> *DCI Confinement Guidelines (Jan. 28, 2003)*, at 2.

<sup>16</sup> *OLC Interrogation Techniques Combined (May 10, 2005)*, at FN 2 ("Although the [OMS Guidelines] refer to the administration of sedatives during transport if necessary to protect the detainee or the rendition team, *id.* at 4-5, the OMS Guidelines do not provide for the use of sedatives for interrogation. The *CIA Background Paper on Combined Techniques (2004)* does not mention the administration of any drugs during the detainee's transportation to the site of the interrogation or at any other time ... ".)

<sup>17</sup> See *CIA OIG Special Review (May 7, 2004)*, at para. 190-192 (portions redacted). This section seems to indicate the CIA OIG was told that "hard takedown" was considered a standard movement procedure at one or more facilities, that a CTC detainee suffered injuries when dragged across the floor during a "hard takedown", and that CIA interrogators did not fully understand how CIA guidance restricted or controlled their use of "hard takedown".*Id.*

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47. Formal designation of individual subjects of the program and the targeting packages.
48. Interrogation plans specific to particular detainees.
49. Requests to CIA Headquarters and approval/disapproval to use specific interrogation techniques on particular detainees.
50. Record of and basis for D/CTC determinations required by *2003 DCI Interrogation Guidelines* prior to D/CTC approval of use of EITs specific to particular detainees.
51. All Requests to CIA Headquarters and approval/disapproval for continued use of techniques for more than 30 days pertaining to interrogations of Mr. Al-Nashiri.
52. Any relevant DOJ decision to decline prosecution of any CIA operative or employee who was part of the RDI program for detainee abuse.
53. All records of conversations between Mr. Al-Nashiri and any other detainee, whether made at CIA secret sites or Guantanamo Bay after 2006.
54. All Claims of "effectiveness" of enhanced interrogation techniques specific to Mr. Al-Nashiri by any CIA operative or any member of the RDI program.
55. All reports from CIA officers that "reliance on analytical assessments that were unsupported by credible intelligence may have resulted in the application of EITs without justification."<sup>18</sup>
56. The complete unredacted employment records of personnel directly engaged in the interrogation of Mr. Al-Nashiri.
57. Records of any intervention by on-scene personnel (including medical or psychological personnel, the chief of base, substantive experts, security officers, and/or other interrogators) to stop the use of any technique, for any reason pertaining to any interrogation of Mr. Al-Nashiri.
58. Any occasion on which on-scene medical or psychological personnel consulted with C/OMS about the appropriateness of use of an EIT pertaining to an interrogation.<sup>19</sup>
59. All other records associated with use of specific interrogation techniques pertaining to any interrogation of Mr. Al-Nashiri or of an interrogation inflicted upon any witness or person whose statement the prosecution may seek to offer.
60. All records of full-time closed circuit monitoring of Mr. Al-Nashiri in detention cell within CIA custody or since September 2006.<sup>20</sup>

<sup>18</sup> *2004 CIA OIG Special Review* at para. 264.

<sup>19</sup> Suggested in context of waterboarding by *OMS Guidelines (4 Sept 2003)*, at 9.

<sup>20</sup> *OLC Interrogation Techniques (May 10, 2005)*, at 7, 11. The COE report describes surveillance cameras and microphones in each cell, presumably for monitoring but possibly with recording capability. COE 2007 para 258 et seq.

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61. All photographs of Mr. Al-Nashiri made by the CIA while Mr. Al-Nashiri was in US. Custody.
62. All records of any instance in which enhanced interrogation techniques were used in a manner inconsistent with limitations placed by CIA policy, to include but not limited to OMS guidelines, or any limitations described to OLC as it reviewed the techniques for legality;
63. All records demonstrating personnel associated with the program reviewed and acknowledged the applicable operational and/or legal guidance for interrogation or conditions of confinement.
64. All records reflecting the use of any "improvised" interrogation techniques.
65. Records of any "concerns over participation in the CTC program" expressed to CIA OIG investigators by persons responsible for custody or interrogation of Mr. Al-Nashiri.<sup>21</sup>
66. All materials prepared in advance of any interrogation or questioning of Mr. Al-Nashiri.
67. A description of information sought from Mr. Al-Nashiri.
68. A copy of any reports or findings created by the Joint Agency investigation and/or the Department of Justice into the destruction of evidence.
69. An unredacted copy of (7 May 2004) CIA OIG Special Review of [redacted] [redacted] Counterterrorism Detention and Interrogation Activities (September 2001 – October 2003), appendices, and supporting documentation. All all information pertaining to the investigation of the detention/interrogation incident that, in November of 2002, led Director or Operations to dispatch a team to inquire and to notify the CIA OIG of the CTC program.
70. Any reports by CIC and DOJ investigators into CIA and DOJ investigations and records of dispositions of incidents in which a debriefer used a handgun and a power drill to frighten Mr. Al-Nashiri into disclosing information,<sup>22</sup> including but not limited to the following:
  - a. Report of incidents made to CIA OIG in January 2003.
  - b. OIG referral to Criminal Division of DoJ.
  - c. Records of DoJ's 11 September 2003, decision not to prosecute.
  - d. Result and findings of OIG investigation, including OIG Report of Investigation titled, "Unauthorized Interrogation Techniques [redacted] [redacted] 29 Oct 2003"...
  - e. Records of disposition at CIA.

<sup>21</sup> CIA OIG Special Review (May 7, 2004), at para. 231-135.

<sup>22</sup> See CIA OIG Special Review (May 7, 2004), at para. 93; OPR Report (July 29, 2009), at 90-95 (portions redacted).

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71. OIG investigations into possible criminal interrogation activity, and record of referrals to, and disposition of, DoJ, including of incidents referred to in CIA OIG Report at para. 165 “which presented facts that warranted criminal investigation.”
72. Any evidence reflecting the use of mind-altering substances in interrogation of Mr. Al-Nashiri.
73. (2008) DOJ OIG report on FBI and detainee abuse.
74. All inquiries by the DOJ, DOD or any other agency into any alleged ethical lapses by counsel in the creation or implementation of the RDI including creation and issuance of advice from OLC “approving” torture and other enhanced interrogation techniques.
75. Any policies or procedures for DoD support for other government agencies involved in the detention and interrogation of terrorism suspects, to include the CIA and FBI, at, above or below the Agency level.

Very Respectfully Submitted,

//s/

ALLISON C. DANELS, Maj, USAF  
Assistant Detailed Defense Counsel

The above discovery request was delivered via e-mail to trial counsel on 9 August 2012.

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# ATTACHMENT

## B

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

<p align="center"><b>UNITED STATES OF AMERICA</b></p> <p align="center">v.</p> <p align="center"><b>ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI</b></p>	<p align="center"><b>Government Response to Defense Request for Discovery</b></p> <p align="center">11 September 2012</p>
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The government received the defense request for discovery dated 9 August 2012, for information pertaining to the RDI program. The government hereby responds to the defense request.

The government will – as it has in the past and continues to do – produce all relevant material, and responsive information in accordance with the Military Commissions Act of 2009 (“M.C.A.”), 10 U.S.C. §§ 948a *et seq.*, Rules for Military Commissions (“R.M.C.”) 701 and 703, Military Commissions Rule of Evidence (“M.C.R.E.”) 505, and other applicable law.

The government acknowledges its duty and responsibility to continually review and provide the defense with information that is relevant, necessary, and material to the preparation of the defense, when such information is in the government’s possession, custody, or control and it is known, or, by the exercise of due diligence, may become known to trial counsel. R.M.C. 701(c).

The following responses correspond to the paragraph numbering in the defense memorandum of 9 August 2012:

1. The government respectfully declines to provide or seek production of all Presidential directives and White House documents, to the extent that such information exists, concerning authorization for and scope of the CIA’s powers to apprehend, detain, and interrogate terrorism suspects, including communications about specific detainees, specific interrogations, and use of specific techniques from 2001 through 2006. The defense’s request for such information is overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense identifies a particular document it seeks and articulates how the document is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.
2. The government respectfully declines to provide or seek production of all records, to the extent that such information exists, associated with White House approval of interrogation techniques, including documents relating to CIA briefings for members of the National Security Counsel (NSC) and other senior Administration officials. The defense’s request for such

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information is overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense identifies a particular document it seeks and articulates how the document is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

3. In accordance with R.M.C. 701 and R.M.C. 703(f), the government has and will provide all documentation regarding the detention, interrogation, and treatment of Mr. Al-Nashiri in the possession of the U.S. Government that is relevant, necessary, and material to the preparation of the defense, subject to any applicable privileges and protective orders. In accordance with R.M.C. 701(c)(3), all statements of the accused relating to the charges, or extenuation and mitigation that are relevant, necessary, and material to the preparation of the defense have been or will be provided to the defense, subject to any applicable privileges and protective orders.

4. The government respectfully declines to provide an unredacted Presidential memorandum, to the extent that such information exists, authorizing (i) detention facilities outside of the United States and (ii) interrogation techniques to be used against detainees, including Mr. Al-Nashiri. The defense's request for such information is overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how the document is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

5. The government respectfully declines to provide any written legal analysis from the Office of Legal Counsel (OLC) concerning the CIA RDI program and Enhanced Interrogation Techniques (EITs), to the extent that such information exists. The defense's request for such information is overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

6. The government respectfully declines to provide records of oral advice from OLC concerning the CIA RDI program or EITs, to the extent that such information exists. The defense's request for such information is overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

7. The government respectfully declines to provide any written and oral information provided by the CIA to OLC to facilitate production of OLC memoranda, to the extent that such information exists. The defense's request for such information is overbroad and not relevant, necessary and material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

8. The government respectfully declines to provide all documentation demonstrating whether, and during what time frame, the CIA considered each piece of OLC analysis, to the extent that such information exists. The defense's request is vague, overbroad, and is not relevant, necessary, and material to the preparation of the defense. If the defense can identify a particular document or piece of information it is seeking and can demonstrate how the requested

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information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

9. The government respectfully declines to provide any assessments by any other agency of the United States Government as to whether coercive interrogation methods were effective, necessary, or legal, to the extent that such information exists. The defense's request for such information is overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

10. The government respectfully declines to provide the names and organizational relationships of the operational and supervisory components of the CIA, to the extent that such information exists. The defense's request for such information is overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

With regard to the specific items in the subparagraphs of the defense's request, the government responds as follows:

a. The government respectfully declines to provide the identity of any individual psychologists, if any exists, with SERE experience who served on-site during any interrogation of the accused as that information is not relevant, necessary and material to the preparation of the defense. If the defense can demonstrate why that information is relevant, necessary and material to the preparation of the defense, the government will reassess the request.

b. The government respectfully declines to provide information relating to the identities of all personnel who counseled the CIA about EITs, to the extent that such information exists. The defense's request for such information is overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can identify specific information and can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

c. The government respectfully declines to provide information relating to the identities of all personnel working in the CIA's Office of Medical Services between December 2002 and September 2006. The defense's request for such information is not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

d. The government respectfully declines to identify all on-scene personnel during any interrogation of the accused as that request is overbroad and is not relevant, necessary and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of defense, the government will reassess this request.

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11. The government declines to produce a list of interrogation techniques developed by SERE psychologists in late 2001 or early 2002, to the extent that such information exists. The requested information is not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.
12. The government respectfully declines to provide any operational and/or legal guidance, to the extent that any such information exists, for the CTC rendition, detention, and interrogation program for high-value detainees (HVDs), whether formal or *ad hoc*. The defense's request for such information is overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.
13. The government respectfully declines to provide an unredacted copy of the CIA Deputy Director of Operations guidance on the standards for capturing suspected terrorists, to the extent that such a document exists. Such a request is not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.
14. In accordance with R.M.C. 701 and R.M.C. 703(f), the government has provided or will provide the defense with information regarding the treatment of the accused while in detention or during an interrogation that is relevant, necessary, and material to the preparation of the defense, regardless of when or where it occurred, subject to any applicable privileges and protective orders.
15. As stated above, the government has provided or will provide the defense with information regarding the treatment of the accused while in detention that is relevant, necessary, and material to the preparation of the defense, regardless of when or where it occurred, subject to any applicable privileges and protective orders. However, the government declines to produce the standards for treatment associated with conditions of confinement or detention, or with force protection, that were applicable at any time between December 2002 and September 2006 as overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess that portion of the request.
16. The government respectfully declines to provide information relating to *ad hoc* operational or legal guidance for interrogation and confinement issued by any agency to the CIA or any officer through January 2003, to the extent that such information exists, as overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.
17. The government respectfully declines to provide information relating to all other CIA guidelines on confinement conditions for CIA detainees, to the extent that such information exists, as overbroad and not relevant, necessary, and material to the preparation of the defense.

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If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

18. The government respectfully declines to produce general internal guidance relating to the conduct of interrogations, to the extent that such information exists. The requested information is not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how that information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

19. The government respectfully declines to produce information relating to an "endgame" plan for detainees, if such information exists. The defense's request is vague and ambiguous with regard to the term "endgame," and it is overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

20. The government will request this document and, to the extent it exists, will review the document. If the document, either in part or in its entirety, contains information that is relevant, necessary and material to the preparation of the defense, the government will provide that information to the defense, subject to any applicable privileges.

21. The government respectfully declines to produce all medical guidelines used by personnel monitoring or administering interrogations, to the extent that such information exists. The defense's request for such information is overbroad and not relevant, necessary, and material to the preparation of the defense. The government, to date, has provided, or will provide, any medical treatment or diagnosis of the accused while in detention regardless of the time or location, subject to any applicable privileges. If the defense can articulate how further information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

With regard to the specific items in the subparagraphs of the request, the government responds as follows:

The government respectfully declines to produce, to the extent that the following information exists, all copies of medical guidelines, the dates during which the guidelines were operational, identification of person promulgating the guidelines, and to whom the applied and records of transmittal, receipt, approval, acknowledgement, dissemination and retention of the guidelines as the defense's request is overbroad and not relevant, necessary, and material to the preparation of the defense. As described in Paragraph 21, the government has provided or will provide all medical treatment of the accused during detention, regardless of the time or location, to the extent that it is relevant, necessary and material to the defense, subject to applicable privileges and protective orders. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

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22. The government respectfully declines to produce guidelines for minimum care provided to detainees in CIA custody between 2002 and 2006, to the extent that such information exists. The defense's request is overbroad and not relevant, necessary, and material to the preparation of the defense. As previously stated, all documentation of medical care provided to the accused has been or will be provided to the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

23. The government respectfully declines to produce information relating to a description of the factual basis for CIA medical personnel knowledge or experience with the use of interrogation techniques, to the extent that such information exists, as the requested information is not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how that portion of the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

24. The government respectfully declines to produce all training materials for CIA personnel interrogating or debriefing detainees, to the extent that such information exists. The defense's request for such information is overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

25. The government respectfully declines to produce all guidelines for screening CIA personnel directly engaged in interrogation of detainees, including from the medical, psychological and security standpoints, to the extent that such information exists. The defense's request for such information is overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

26. The government respectfully declines to produce information relating to OMS's assessment of the relevance of SERE psychologists' expertise in specific interrogation techniques, to the extent that such information exists, as not relevant, necessary, and material the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

27. The government has provided and will provide the defense with the conditions of confinement of the accused to include any unauthorized treatment of the accused, regardless of time or location, that are relevant, necessary and material to the preparation of the defense, subject to applicable any privileges. However, the government respectfully declines to produce, beyond any actual conditions of confinement of the accused, any guidance concerning use of "improvised" interrogation techniques or use of any technique other than specifically identified interrogation techniques provided to any CIA operative or other interrogator who participated in any interrogation of the accused, to the extent that such information exists, as this information is not relevant, necessary or material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

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28. The government has provided and will provide the defense with the conditions of confinement of the accused to include any unauthorized treatment of the accused, regardless of time or location, that are relevant, necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders. However, the government respectfully declines to produce information dated late December 2002 until September 2006, to the extent that such information exists, reducing the period for "standard technique" sleep deprivation from 72 to 48 hours, and the basis for the decision to make this change as not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

29. The government will request that document, to the extent that such document exists. The government will review that document and provide any information contained therein that is relevant, necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders.

30. In accordance with R.M.C. 701 and R.M.C. 703(f), the government understands its obligations to provide the defense with information that is relevant, necessary, and material to the preparation of the defense. As such, to the extent that information relating to the treatment of the accused during transportation between any detention location exists and is relevant, necessary and material to the preparation of the defense, the government will produce such information, subject to any applicable privileges and protective orders. However, the government respectfully declines to produce all logistical records of the accused's transportation between detention locations, including stopover, to the extent that such information exists. The defense's request is overbroad and not relevant, necessary and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary and material to the preparation of the defense, the government will reassess the request.

31. The government respectfully declines to produce all equipment used for detainees' transportation, to the extent that such information exists, as overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

32. The government has provided and will provide the defense with information regarding the conditions of confinement of the accused, regardless of time or location, and any statement made by the accused while in detention, regardless of time or location, that are relevant, necessary and material to the preparation of the defense, subject to applicable any applicable privileges and protective orders. The government is unaware of any videotapes, audiotapes or transcripts of interrogations of the accused. To the extent that the defense is requesting information regarding other individuals who testify at trial, the government will provide any statements made by any witness at trial pursuant to the Jenks Act (18 U.S.C. § 3500), subject to any applicable privileges and protective orders. However, the government declines to provide all records of interrogations for any detainee other than the accused.

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33. The government declines to produce a description of all 92 tapes allegedly prepared by a CIA lawyer as overbroad and not relevant, necessary, or material to the preparation of the defense. The government will provide information, to the extent that any such information exists, on any videotapes of the accused that were allegedly erased that is relevant, necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders.

34. In accordance with R.M.C. 701(c)(3), the government has produced and will produce all statements of the accused in the possession of the United States Government that are relevant, necessary, and material to the preparation of the defense, regardless of where or when they were made, subject to any applicable privileges and protective orders. To the extent that any intelligence reports may contain information in extenuation and mitigation, that information will be produced. However, the government respectfully declines to produce all intelligence reports describing information obtained from interrogations of the accused, to the extent that such reports exist, as the requested information is overbroad and not relevant, necessary, and material to the preparation of the defense.

35. As previously stated, the government has produced or will produce all statements of the accused in the possession of the United States Government that are relevant, necessary and material to the preparation of the defense regardless of when or where they were made, subject to any applicable privileges and protective orders. However, the government respectfully declines to produce all interrogators' and observers' notes of interrogations of the accused or any individual interrogated by the CIA or DoD who may be called by the prosecution or whose statement the prosecution may seek to offer, to the extent such notes exist. To the extent that the defense is requesting information regarding other individuals who testify at trial, the government will provide any statements made by any witness at trial pursuant to the Jenks Act (18 U.S.C. § 3500), subject to any applicable privileges and protective orders.

36. In accordance with R.M.C. 701 and R.M.C. 703(f), the government has produced and will produce all medical records of the accused while in detention, regardless of time or location, that are relevant, necessary, and material to the preparation of the defense, subject to any applicable privileges and protective orders. If the defense believes a particular document has not been produced, the defense should articulate specifically what document it is seeking and how such document is relevant, necessary, and material to the preparation of the defense.

37. As previously stated, the government has produced and will produce all medical records of the accused while in detention, regardless of time or location, that are relevant, necessary, and material to the preparation of the defense, subject to any applicable privileges and protective orders. If the defense believes a particular document has not been produced, the defense should articulate specifically what document it is seeking and how such document is relevant, necessary, and material to the preparation of the defense.

38. As previously stated, the government has produced and will produce all medical records of the accused while in detention, regardless of time or location, that are relevant, necessary, and material to the preparation of the defense, subject to any applicable privileges and protective orders. However, the government declines to produce any medical records, physical or

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psychological, to the extent that any such records exist, of any other detainee not the accused, as such request is overbroad and not relevant, necessary and material to the preparation of the defense. To the extent that any detainee becomes a witness against the accused at trial, the government will comply with all discovery obligations. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

39. As previously stated, the government has produced and will produce all medical records of the accused while in detention, regardless of time or location, that are relevant, necessary, and material to the preparation of the defense, subject to any applicable privileges and protective orders. However, the government respectfully declines to identify any information about the accused's medical status, background and treatment in detention and interrogation given to and/or used by medical personnel treating or evaluating the accused, to the extent that such information exists, as the defense request is overbroad and not relevant, necessary and material to the preparation of the defense. If the defense believes additional information is required, after reviewing the discovery provided by the government, the defense can request particular information. If the defense can demonstrate how that information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

40. As previously stated, the government has produced and will produce all medical records of the accused while in detention, regardless of time or location, that are relevant, necessary, and material to the preparation of the defense, subject to any applicable privileges and protective orders. The defense has requested that the government not review any of the psychological records of the accused and instead provide that information directly to the defense. For the psychological records of the accused, to the extent that they exist, while detained at JTF-GTMO, those records were produced directly to the defense. For the psychological records of the accused for his detention prior to September 2006, to the extent that they exist, those records were submitted to the Commission pursuant to the procedures afforded under M.C.R.E. 505 for approval and production to the defense. A taint attorney, who is not detailed as a full member of the prosecution team, was utilized to create those summaries. As such, the government is unaware of any records of analysis of the blood and/or saliva of the accused to determine levels of stress hormones such as cortisol, testosterone, adrenaline and neuropeptide-Y. If the defense can articulate a particular piece of information it believes exists and can demonstrate how that information is relevant, necessary and material to the preparation of the defense, the government will reassess the request.

41. As previously stated, the government has provided and will provide the defense with information regarding the conditions of confinement of the accused, regardless of time or location, that are relevant, necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders. Additionally, as previously stated, the government has produced and will produce all medical records of the accused while in detention, regardless of time or location, that are relevant, necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders. The government is unaware of any specific "evaluations" of "learned helplessness" pertaining to the accused. If, after reviewing the provided discovery, the defense believes there exists specific information and the defense can demonstrate how that information is relevant, necessary and material to the preparation of the

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defense, the government will reassess the request. Regarding any records of any other detainee other than the accused, to the extent that such records exist, the government respectfully declines to produce those records. The defense's request, to the extent it pertains to detainees not the accused, is overbroad and not relevant, necessary and material to the preparation of the defense. If a detainee becomes a witness against the accused at trial, the government will comply with all of its discovery obligations.

42. To the extent that the government has information relating to the detention, interrogation, and treatment of the accused, the government has and will produce such information if it is relevant, necessary, and material to the preparation of the defense, subject to any applicable privileges and protective orders. The government respectfully declines to produce "environmental and other considerations, as well as particularized considerations affecting any given Detention Facility" affecting compliance with DCI 2003 Confinement Guidelines *vis a vis* the accused, as the defense's request is vague, overbroad, and not relevant, necessary, and material to the preparation of the defense. If the defense can identify a particular piece of information that it is requesting and can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

43. The government respectfully declines to identify all "Responsible CIA Officers" for each specific detention facility where the accused was detained, to the extent that such information exists, as the defense's request is overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

44. As previously stated, the government has produced and will produce all medical records of the accused and any conditions of confinement of the accused, while in detention, regardless of time or location, that are relevant, necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders. Additionally, as previously stated, the prosecution team has not reviewed the psychological records of the accused. If after reviewing the provided discovery, the defense believes additional information exists and is relevant, necessary and material to the preparation of the defense, the defense can submit a request for this information. If the defense can demonstrate that the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess this request.

45. In accordance with R.M.C. 701(c)(3), the government has produced and will produce all statements of the accused that are relevant, necessary, and material to the preparation of the defense, subject to any applicable privileges and protective orders. After reviewing the discovery, the defense may submit an additional request if it believes a particular piece of information was not provided. In its request, if the defense can demonstrate how that information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

46. As previously stated, the government has provided and will provide the defense with the conditions of confinement of the accused, regardless of time or location, that are relevant,

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necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders. However, the government respectfully declines to produce information relating to the treatment of any other detainee, to the extent that such information exists, as the requested information is not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

47. The government respectfully declines to produce information regarding formal designation of individual subjects of the program and the targeting packages, to the extent that such information exists, as the information is not relevant, necessary and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

48. The government respectfully declines to produce information regarding interrogation plans specific to particular detainees, to the extent that such information exists, as the information is not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

49. As previously stated, the government has provided and will provide the defense with the conditions of confinement of the accused, regardless of time or location, that are relevant, necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders. The government respectfully declines to produce information relating to requests to CIA headquarters and approval/disapproval to use specific interrogation techniques on particular detainees, to the extent that such information exists, as the request is overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

50. The government respectfully declines to produce records of and basis for D/CTC determinations required by 2003 DCI Interrogation Guidelines prior to D/CDT approval of use of EITs specific to a particular detainee other than the accused, to the extent that such records exist as the defense's request for such information is vague, overbroad, and not relevant, necessary and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

51. The government respectfully declines to produce all requests to CIA headquarters and approval/disapproval for continued use of techniques for more than 30 days pertaining to the interrogations of the accused as such information is not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

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52. The government respectfully declines to produce any relevant DOJ decision to decline to prosecute any CIA operative or employee who was part of the RDI program for detainee abuse, to the extent that such information exists, as the requested information is not relevant, necessary and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

53. As previously stated, the government has produced or will produce all statements of the accused that are relevant, necessary, and material to the preparation of the defense, subject to any applicable privileges and protective orders. However, the government respectfully declines to produce all records of conversations between the accused and any other detainee, regardless of where the conversations occurred, as the requested information is not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

54. The government respectfully declines to produce any information regarding any claims of "effectiveness" of enhanced interrogation techniques specific to the accused by any CIA operative or any member of the RDI program, to the extent that such information exists, as the requested information is not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

55. The government respectfully declines to produce any reports from CIA officers that "reliance on analytical assessments that were unsupported by credible intelligence may have resulted in the application of EITs without justification," to the extent that such reports exist, as the requested information is overbroad and not relevant, necessary and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

56. The government respectfully declines to produce the complete unredacted employment records of personnel directly engaged in the interrogation of the accused, to the extent that such records exist, as the requested records are overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

57. As previously stated, the government has provided and will provide the defense with the conditions of confinement of the accused, regardless of time or location, that are relevant, necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders. However, the government respectfully declines to produce records of any intervention by on-scene personnel to stop the use of any technique, for any reason pertaining to any interrogation of the accused, to the extent that such information exists, as the requested information is not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to

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the preparation of the defense, the government will reassess the request.

58. As previously stated, the government has provided and will provide the defense with information regarding the conditions of confinement of the accused, regardless of time or location, that are relevant, necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders. However, the government respectfully declines to produce information pertaining to any occasion on which on-scene medical or psychological personnel consulted with C/OMS about the appropriateness of use of an EIT pertaining to an interrogation, to the extent that such information exists, as the requested information is not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

59. As previously stated, the government has provided and will provide the defense with the conditions of confinement of the accused, regardless of time or location, that are relevant, necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders. However, the government respectfully declines to produce all other records associated with use of specific interrogation techniques pertaining to any interrogation of the accused or of an interrogation inflicted up on any witness or person whose statement the prosecution may seek to offer as the requested information is not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

60. The government respectfully declines to produce all records of full-time closed circuit monitoring of the accused in detention cells, regardless of time or location, to the extent that such records exist, as the requested information is not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

61. As previously stated, the government has provided and will provide the defense with the conditions of confinement of the accused, regardless of time or location, that are relevant, necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders. The government will review all photographs of the accused while in detention, to the extent that such photographs exist. If any photograph of the accused is deemed relevant, necessary, and material to the preparation of the defense, it will be provided to the defense, subject to any applicable privileges and protective orders. However, the government respectfully declines to produce all photographs of the accused made by the CIA while the accused was in detention, to the extent that such photographs exist, as the request is overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested photographs are relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

62. As previously stated, the government has provided and will provide the defense with information regarding the conditions of confinement of the accused, regardless of time or

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location, that are relevant, necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders. However, the government respectfully declines to produce all records of any instance in which enhanced interrogation techniques were used in any manner inconsistent with limitations placed by CIA policy, to include but not limited to OMS guidelines, or any limitations described to OLC as it reviewed the techniques for legality, to the extent that such records exist, as the request is overbroad and not relevant, necessary, and material to the preparation of the defense. However, if the defense can articulate how this information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

63. The government respectfully declines to produce all records demonstrating that personnel associated with the program who reviewed and acknowledged the applicable operational and/or legal guidance for interrogation and conditions of confinement, as overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

64. As previously stated, the government has provided and will provide the defense with information regarding the conditions of confinement of the accused, regardless of time or location, that are relevant, necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders. However, the government respectfully declines to produce all records reflecting the use of any "improvised" interrogation technique, to the extent that any such records exist, as overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

65. The government respectfully declines to produce records of any "concerns over participation in the CTC program" expressed to CIA OIG investigations by persons responsible for custody or interrogation of the accused, to the extent that any such records exist, as not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

66. The government respectfully declines to produce all materials prepared in advance of any interrogation or questioning of the accused as overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess this request.

67. The government respectfully declines to produce a description of information sought from the accused as the defense's request is not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

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68. The government will request a copy of any reports or findings created by the Joint Agency investigation and/or the Department of Justice into the destruction of evidence. To the extent that such reports or findings exist, and that such reports or findings are relevant, necessary, and material to the preparation of the defense, that information will be provided to the defense, subject to any applicable privileges and protective orders.

69. The government respectfully declines to produce a full unredacted copy of (7 May 2004) CIA OIG Special Review of [redacted] Counterterrorism Detention and Interrogation Activities (September 2001-October 2003), appendices, and supporting documentation. To the extent that any information contained within that report pertains to the accused and is relevant, necessary, and material to the preparation of the defense, that information will be provided to the defense, subject to any applicable privileges and protective orders. If the defense can demonstrate how a full unredacted copy of the entire report is relevant, necessary and material to the preparation of the defense, the government will reassess the request.

70. As previously stated, the government has produced and will produce all medical records of the accused and any conditions of confinement of the accused, while in detention, regardless of time or location, that are relevant, necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders. However, the government respectfully declines to produce all reports of investigations and records of dispositions of incidents in which a debriefer used a handgun and a power drill to frighten the accused, as the request is overbroad and not relevant, necessary and material to the preparation of the defense. If, after reviewing the discovery provided by the government, the defense can demonstrate why the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

With regard to the specific items in the subparagraphs of the request, the government responds as follows:

a. The government will review a report of incidents made to CIA OIG in January 2003, to the extent that such report exists. If the report contains information that is relevant, necessary and material to the preparation of the defense, that information will be produced to the defense, subject to any applicable privileges and protective orders.

b. The government respectfully declines to produce the OIG referral to Criminal Division of DOJ, to the extent that any referral exists, as such information is not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess this request.

c. The government respectfully declines to produce records of DOJ's 11 September 2003 decision not to prosecute as not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess this request.

d. The government will review the result and findings of the OIG investigation,

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including the OIG Report of Investigation titled "Unauthorized Interrogation Techniques [redacted] 29 October 2003." If the report contains information that is relevant, necessary, and material to the preparation of the defense, that information will be produced to the defense, subject to any applicable privileges and protective orders.

e. The government respectfully declines to produce records of disposition at CIA, to the extent that such records exist, as not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess this request.

71. As previously stated, the government has provided and will provide the defense with information regarding the conditions of confinement of the accused, regardless of time or location, that are relevant, necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders. However, the government respectfully declines to produce any OIG investigation into possible criminal interrogation activity, and record of referrals to, and disposition of DOJ, including incidents referred to in CIA OIG Report at paragraph 165 "which presented facts that warranted criminal investigation," as not relevant, necessary, and material to the preparation of the defense. If the defense can articulate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

72. As previously stated, the government has provided and will provide the defense with the conditions of confinement of the accused, regardless of time or location, that are relevant, necessary and material to the preparation of the defense, subject to any applicable privileges and protective orders. Additionally, as previously stated, the government has produced and will produce all medical records of the accused while in detention, regardless of time or location, subject to any applicable privileges. The government is unaware of any use of mind-altering substances in interrogations of the accused. If after reviewing the discovery provided to the defense, the defense can demonstrate how further information on this matter would be relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

73. The government will review the 2008 DOJ OIG report on FBI and detainee abuse, to the extent that such a report exists. If the report contains information that is relevant, necessary and material to the preparation of the defense, the government will provide that information to the defense, subject to any applicable privileges and protective orders.

74. The government respectfully declines to produce all inquiries by the DOJ, DoD or any other agency into any alleged ethical lapses by counsel in the creation or implementation of the RDI including creation and issuance of advice from OLC "approving" torture and other enhanced interrogation techniques, to the extent that any such information exists, as overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

75. The government respectfully declines to produce any policies or procedures for DoD support

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for other government agencies involved in the detention and interrogation of terrorism suspects, to include the CIA and FBI, at, above, or below the Agency level, to the extent that such information exists, as the defense request is vague, overbroad and not relevant, necessary, and material to the preparation of the defense. If the defense can demonstrate how the requested information is relevant, necessary, and material to the preparation of the defense, the government will reassess the request.

Respectfully submitted,

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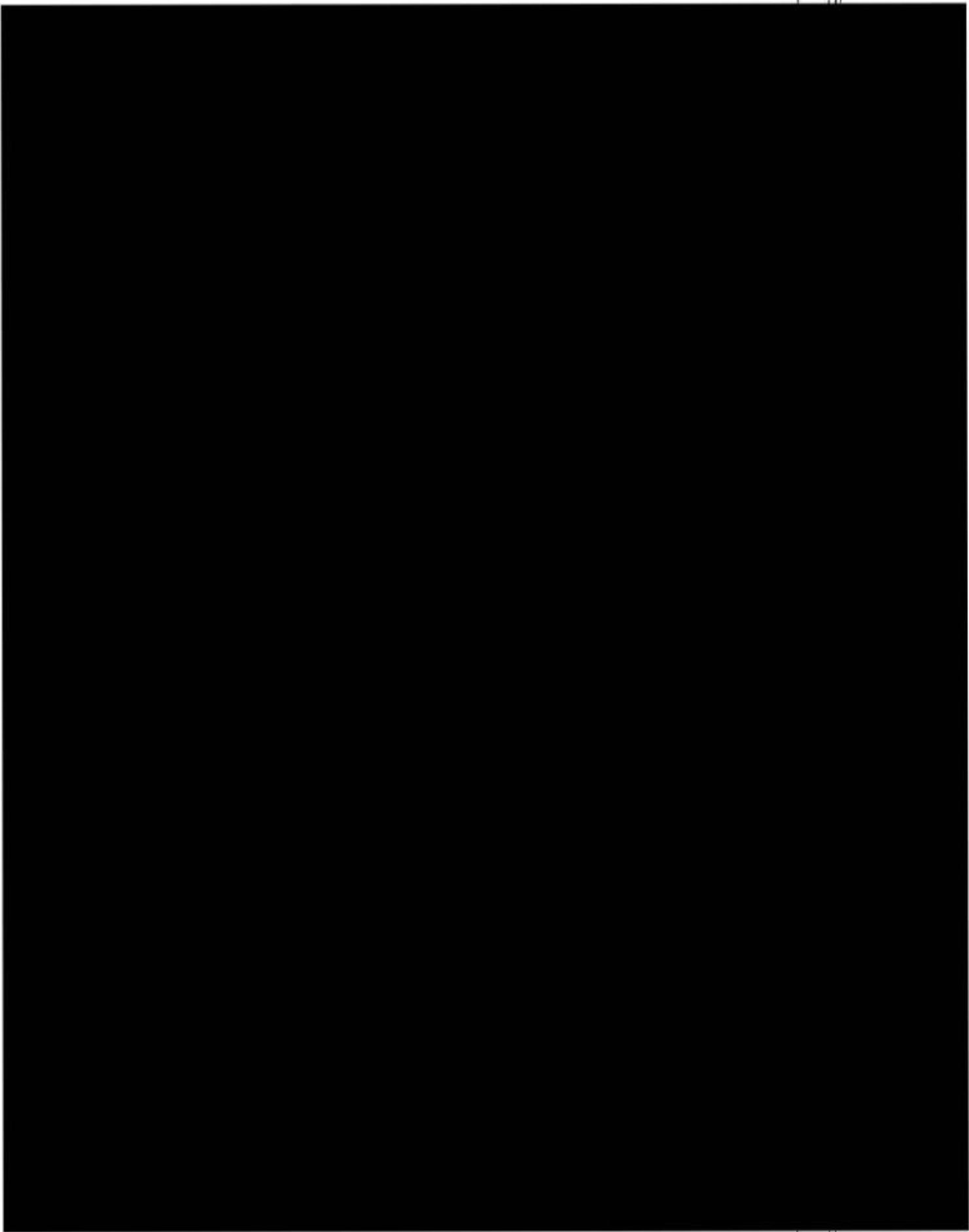
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Anthony W. Mattivi  
CDR Andrea Lockhart, JAGC, USN  
Justin T. Sher  
Joanna Baltes  
Maj Chris Ruge, USMC  
LT Cherie Jolly, JAGC, USN  
Trial Counsel  
  
Mark Martins  
Chief Prosecutor  
Military Commissions

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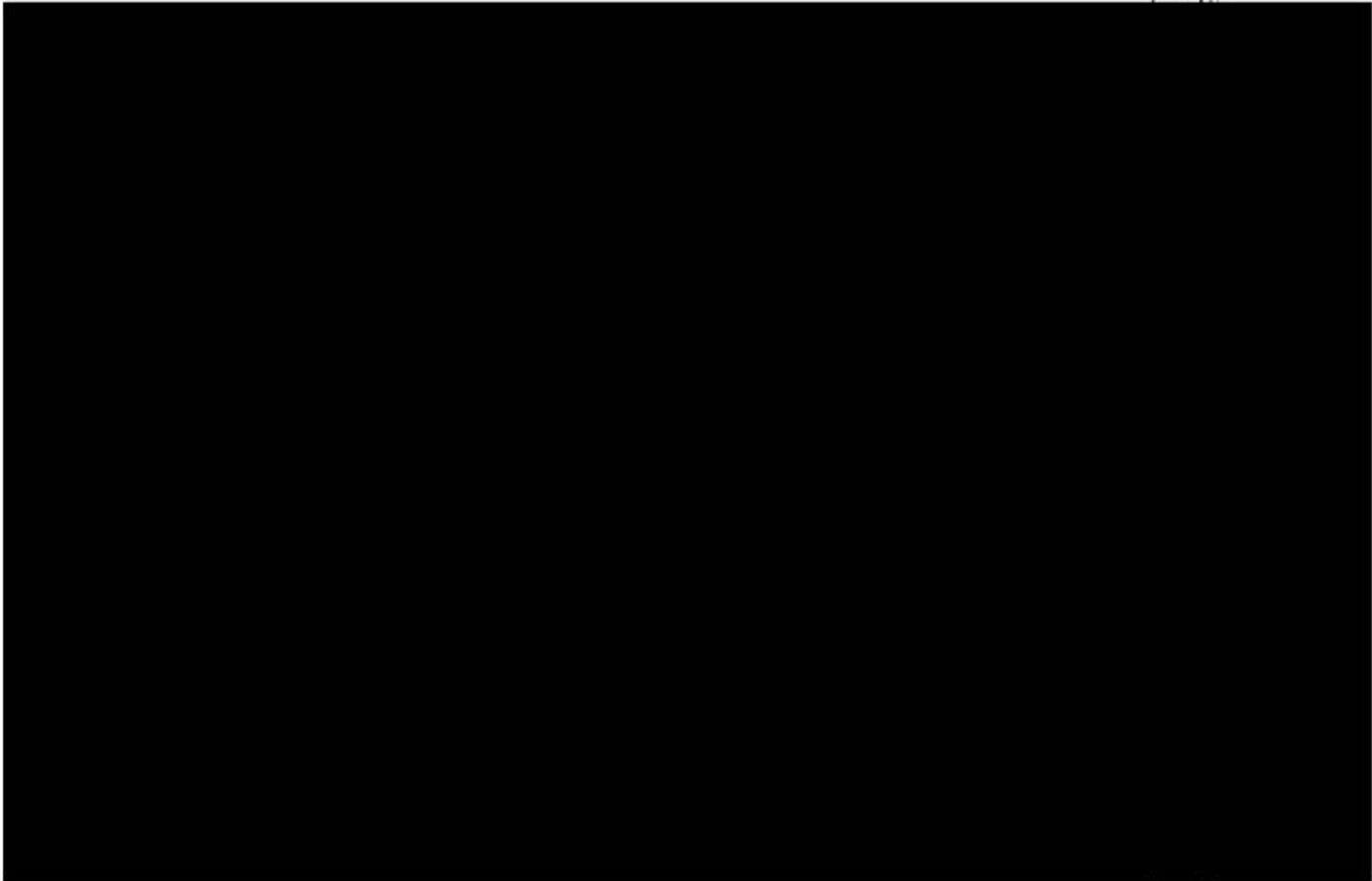
# ATTACHMENT

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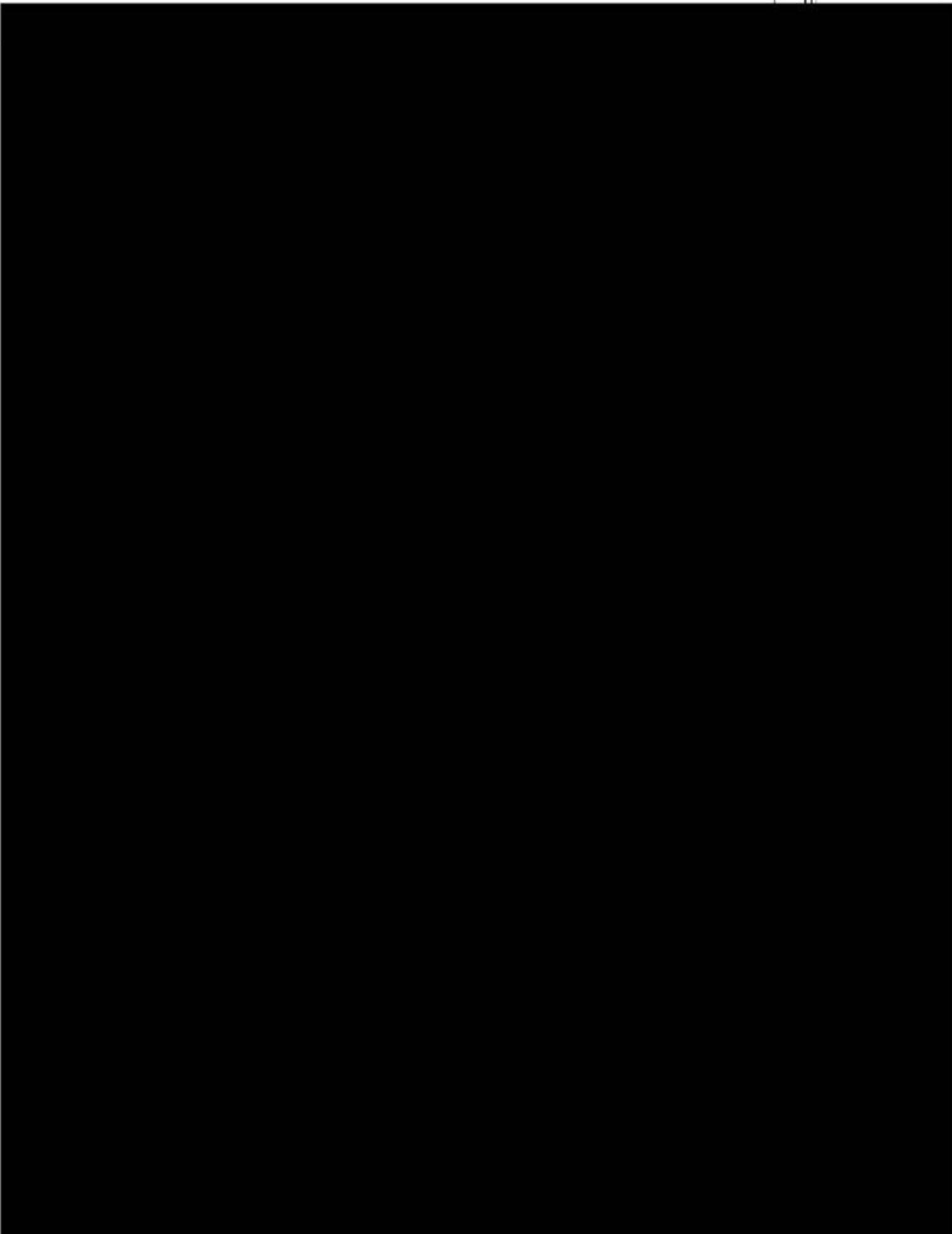
Appellate Exhibit 120  
Page 51 of 61



# ATTACHMENT

# D





# ATTACHMENT

# E

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

UNITED STATES OF AMERICA  v.  ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI	<b>Government Response to Defense Supplemental Request for Discovery</b>  11 June 2012
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The government received two defense requests for discovery, both dated 8 May 2012. The government hereby responds to both requests. The government will produce all relevant, material, and responsive information in accordance with the Military Commissions Act of 2009 ("M.C.A."), 10 U.S.C. § 948a *et seq.*, the Rules for Military Commission ("R.M.C.") 701 and 703, the Military Commission Rules of Evidence ("M.C.R.E.") 505, and other applicable law.

All materials that are found to be discoverable, specific to the requests, and that are known to and in the possession of the government, will be provided to the defense in a timely manner. The government acknowledges its obligation under R.M.C. 701(a)(5) to continually review and provide the defense with discoverable materials.

As to the defense's request in subparagraph (a), the government respectfully declines to provide or seek production of all materials in the government's possession relating to the planning for and transfer of the accused to and from any location, including reproductions of all documents, recordings, communications, plans, lists of personnel either employed by or working with the U.S. government, weapons or other force protection measures employed, the names of and contact information of foreign personnel and agreements with their host governments authorizing their participation. To the extent that any relevant, material, and responsive treatment-related information exists, the government will produce that information in accordance with its discovery obligations. If the defense can demonstrate the relevance of the requested information, the government will reassess the request.

As to the defense's request in subparagraph (b), the government respectfully declines to provide or seek production of all documents relating to the staff, lawyers, medical and mental health personnel and administrators while the accused was in detention, including, all documents related to the staffing, organization and administration of the any detention of the accused. To the extent the government possesses such information, if defense counsel can demonstrate the relevance and materiality of the requested information, the government will reassess the request.

As to the defense's request in subparagraph (c) to produce material in the possession of a foreign government, the government respectfully declines to provide or seek production of those materials as such materials, to the extent that any exists, are not in the custody and control of the U.S. government and therefore not subject to compulsory process. R.M.C. 703(f)(2)(A). If the defense can demonstrate that a certain item of relevant discovery possessed by a foreign government is of such central importance to an issue that it is essential to a fair trial, and if there

is no adequate substitute for such evidence, the government will make all reasonable efforts to assist the defense in obtaining that item of discovery.

As to the defense's request in subparagraph (d), the government respectfully declines to provide or seek production of the names, contact information, position, and dates of employment of any individual involved in the interrogation, transportation or detention of the accused, including any employment records, disciplinary records, records of complaints made by or against these employees, and training records of these employees. To the extent the government possesses such information, if the defense demonstrates the relevance and materiality of the requested information, the government will reassess the request.

As to the defense's request in subparagraph (e), the government will produce, in accordance with R.M.C. 701 and M.C.R.E. 505, any statements of the accused or any co-conspirator that is material to the preparation of the defense.

As to the defense's request in subparagraph (f), the government will provide, in accordance with R.M.C. 701 and M.C.R.E. 505, all medical records of the accused while in detention. The government respectfully declines to produce medical records relating to other co-conspirators, named or unnamed. If the defense demonstrates the relevance of the medical records relating to the other co-conspirators, the government will reassess the request.

As to the defense's request in subparagraph (g), the government respectfully declines to provide or seek production of a list of all companies and contractors, including builders, utility providers, audio and video service providers, maintenance and cleaning service providers, and the terms of any agreements with third parties, foreign or domestic, private or governmental with whom the government contracted to support the interrogation, transportation or detention of the accused while in detention, to the extent that any such information exists. To the extent the government possesses such information, if the defense demonstrates the relevance and materiality of the requested information, the government will reassess the request.

If you believe that the government has not complied with its discovery obligations, please notify trial counsel.

Respectfully submitted,

/s/

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# ATTACHMENT

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