

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

UNITED STATES OF AMERICA

v.

**KHALID SHAIKH MOHAMMAD,
WALID MUHAMMAD SALIH
MUBARAK BIN ‘ATTASH,
RAMZI BIN AL SHIBH,
ALI ABDUL AZIZ ALI,
MUSTAFA AHMED ADAM
AL HAWSAWI**

AE 783C

INTERIM ORDER

Motion to Compel Discovery in a Form
Releasable to Mr. Mohammad

10 March 2023

1. **Procedural History.** On 12 March 2020, Mr. Mohammad moved the Commission to compel production of twelve categories of classified discovery previously provided to Counsel for Mr. Mohammad to Mr. Mohammad himself “in a form that enables him to review and meaningfully discuss it with his defense counsel.”¹ The Prosecution responded on 26 March 2020 and amended their response on 31 March 2020.² On 30 June 2021, Mr. Mohammad replied.³ The parties (with the exception of Mr. Hawsawi)⁴ presented oral argument on 13 September 2021.⁵
2. In response to Mr. Mohammad’s initial request for the release of documents in 12 categories,⁶

¹ AE 783 (KSM), Motion to Compel Discovery in a Form Releasable to Mr. Mohammad, filed 12 March 2020, at 3.

² See AE 783A (GOV), Government Response to Motion to Compel Discovery in a Form Releasable to Mr. Mohammad, filed 26 March 2020; AE 783A (GOV Amend), Amendment to Government Response to Motion to Compel Discovery in a Form Releasable to Mr. Mohammad, filed 31 March 2020.

³ See AE 783B (KSM), Mr. Mohammad’s Reply to Government Response to Mr. Mohammad’s Motion to Compel Discovery in a Form Releasable to Mr. Mohammad, filed 30 June 2021.

⁴ Due to the excused absence of his Learned Counsel, Mr. Hawsawi was given leave to defer argument and submit written matters. See AE 815Q/AE 833AA Ruling, Defense Emergency Motion to Reconsider AE 815P Ruling, 3 September 2021. Mr. Hawsawi did not submit written matters.

⁵ See Unofficial/Unauthenticated Transcript, *United States v. Khalid Shaikh Mohammad et al.*, 13 September 2021, at pp. 33756 – 33817.

⁶ See AE 783 (KSM) at Attachment B.

on 15 May 2019, the Prosecution declined “to conduct a wholesale review of the voluminous information at issue . . . However, if the Defense makes a particularized showing that a specific document is necessary for Mr. Mohammad’s individual viewing in order to prepare his defense, the Prosecution **will request** a classification review of that information on a document-by-document basis.”⁷ Mr. Mohammad responded on 29 May 2019 with DR-106-1-MOH, a request for 48 specific documents, to which he asserts the Prosecution did not respond.⁸

3. Mr. Mohammad also pointed out that several of the documents requested in a form releasable to Mr. Mohammad “are *unclassified* documents, but the government has declined to authorize their release to Mr. Mohammad.”⁹

4. Prior to ruling, the Commission requires additional information regarding the status of the Prosecution’s efforts to declassify the documents Mr. Mohammad requested in accordance with the Prosecution’s 15 May 2019 offer. The Commission also directs the Prosecution to state its position on whether the unclassified documents identified by Mr. Mohammad may be authorized for release to Mr. Mohammad and if not, why not.

5. **Order.** Not later than **17 March 2023**, the Prosecution shall:

a. submit an update on the status of their classification review of the documents

Mr. Mohammad requested; and

b. state its position on whether the unclassified documents identified by Mr. Mohammad may be authorized for release to Mr. Mohammad.

⁷ AE 783 (KSM) at 5 (emphasis added).

⁸ See *id.* at 5, 27-31.

⁹ AE 783B (KSM) at 7.

c. If the Prosecution asserts the unclassified documents may not be released to Mr. Mohammad, the Prosecution will advise the Commission why not.

So **ORDERED** this 10th day of March, 2023.

//s//

MATTHEW N. MCCALL, Colonel, USAF
Military Judge
Military Commissions Trial Judiciary