

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

**UNITED STATES OF AMERICA**

v.

**KHALID SHAIKH MOHAMMAD;  
WALID MUHAMMAD SALIH  
MUBARAK BIN 'ATTASH;  
RAMZI BINALSHIBH;  
ALI ABDUL AZIZ ALI;  
MUSTAFA AHMED ADAM  
AL HAWSAWI**

**AE 442A (GOV)**

**Government Response**

To Defense Motion for Appropriate Relief  
from Interference with Right to Participate  
in His Own Defense

26 August 2016

**1. Timeliness**

The Prosecution timely files this Response pursuant to Military Commissions Trial Judiciary Rule of Court ("R.C") 3.7.

**2. Relief Sought**

The Prosecution respectfully requests that this Commission deny all relief<sup>1</sup> requested within AE 442 (MAH), Mr. Hawsawi's Motion for Appropriate Relief from Interference with His Right to Participate in His Own Defense.

**3. Burden of Proof**

As the moving party, the Defense must demonstrate by a preponderance of the evidence that the requested relief is warranted. R.M.C. 905(c)(1)-(2).

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<sup>1</sup> Within AE 442 (MAH), the Defense specifically requests that "the Military Judge order Joint Task Force-Guantanamo (JTF-GTMO) to allow meetings with counsel at Camp 7 with appropriate facilities to accommodate such meetings; to stream a video feed of Commission hearings to Camp 7 so that Mr. al Hawsawi can watch proceedings when he is physically in too much pain to attend, with the concomitant ability to confer with counsel during such hearings via privileged video-telephone conference or telephone call; and, to use alternative means of transporting Mr. al Hawsawi to hearings and to his counsel meetings." AE 442 (MAH) at 1. Alternatively, the Defense requests that "[s]hould the commission determine it lacks jurisdiction to order such relief, the defense requests that the Military Judge dismiss all charges with prejudice." *Id.* at 1. The Prosecution respectfully requests that the Commission deny every form of relief requested within the Defense Motion.

#### 4. Facts

##### I. **Defense Counsel for Mr. Hawsawi Requests this Commission to Intervene in Mr. Hawsawi's Medical Care**

On 15 December 2014, Defense counsel for Mr. Hawsawi filed AE 322 (MAH), Defense Emergency Motion for Appropriate Medical Intervention and Return of Legal Files. *See* AE 322 (MAH). In filing their Motion, the Defense requested an Emergency Order from the Commission, compelling:

...the immediate return of Mr. al Hawsawi's medical devices and medications; immediate and appropriate medical testing to determine the exact source of blood in Mr. al Hawsawi's urine; release of all medical records to date to counsel and to Mr. al Hawsawi's treating physician(s); a meeting with Mr. al Hawsawi's physician(s); and *an order to medical personnel to provide whatever immediate medical procedures are necessary under established standards of care in order to remedy Mr. al Hawsawi's severe and chronic (long-standing) medical conditions.*

*Id.* at 1 (emphasis added). The Defense asserted that “[w]ithout an immediate order for appropriate medical intervention, Mr. al Hawsawi will continue in his severe and significant medical deterioration that is rapidly becoming life-threatening.” *Id.* at 2.

On 29 December 2014, the Prosecution timely responded and filed AE 332B (GOV). Within its Response, the Prosecution requested that the Commission deny the Defense's requested relief and stated that “Mr. Hawsawi has access to the DoD physicians and can ask them for medical assistance if he so chooses.” AE 332B (GOV) at 6. Further, the Prosecution asserted that “evidence indicates that since 8 December 2014, Mr. Hawsawi has refused his medications for his current treatment regimen.” *Id.* at 6.

On 10 March 2015, after hearing oral argument on 12 February 2014, the Commission issued AE 332C, Order, Defense Motion for Medical Intervention. In denying the Defense Motion, the Military Judge stated that the Military Commission “has been established to try alien unprivileged enemy belligerents for violations of offenses triable by military commissions,” and that “[i]ts jurisdiction is limited to try persons subject to the Military Commissions Act of 2009.”

AE 332C at 2 (citing 10 U.S.C. §§ 948b, 948d). As such, the Commission ruled that it “does not have the authority to address issues concerning medical care.” *Id.* at 2.

## **II. Defense Counsel for Mr. Hawsawi Requests This Commission to Order Depositions of Mr. Hawsawi’s Healthcare Providers**

On 23 January 2015, Defense counsel for Mr. Hawsawi filed AE 340 (MAH), Defense Motion to Depose Mr. Hawsawi’s Health Care Providers. *See* AE 340 (MAH). Within its Motion, the Defense requested the Commission order the deposition of three of Mr. Hawsawi’s health care providers so that they may answer questions regarding his medical history/conditions. *Id.* at 1. Defense counsel asserted that “[d]epositions of these health care personnel are necessary to have Mr. al Hawsawi’s health status and treatment plan described in full, on the record given the lack of access to his physicians” and that such record “will make these issues unequivocally clear to the Commission so that judicial intervention may occur before Mr. al Hawsawi’s health deteriorates further.” *Id.* at 2.

On 6 February 2015, the Prosecution timely responded and filed AE 340A (GOV). In doing so, the Prosecution requested that the Commission deny the Defense Motion because: (1) the depositions are unnecessary because facts already exist in the form of his medical records; (2) the deposition is not sought to preserve testimony for future use at trial; and, (3) there is no evidence that his healthcare providers will be unavailable at trial. AE 340A (GOV) at 1.

On 10 March 2015, the Commission issued AE 340B, Order, Defense Motion to Depose Mr. al Hawsawi’s Health Care Providers. In denying the Defense Motion, the Military Judge stated that the Military Commission “has been established to try alien unprivileged enemy belligerents for violations of offenses triable by military commissions,” and that “[i]ts jurisdiction is limited to try persons subject to the Military Commissions Act of 2009.” AE 340B at 2 (citing 10 U.S.C. §§ 948b, 948d). Further, the Commission noted that it “denied Mr. al Hawsawi’s motion AE 332 (MAH), on a similar basis; because Mr. al Hawsawi is attempting to depose his medical providers to enable “adequate” medical care, this request is also outside of this Commission’s jurisdiction.” AE 340B at 2.

### **III. Defense Counsel for Mr. Hawsawi Seek Medical Accommodation from the Commission**

On 12 August 2016, the Defense filed the instant motion, AE 442 (MAH), Defense Motion for Appropriate Relief from Interference with Right to Participate in Own Defense Due to Torture Injuries. *See* AE 442 (MAH). Within its Motion, the Defense requests the Commission to order JTF-GTMO to “allow meetings with counsel at Camp 7 with the appropriate facilities to accommodate such meetings; to stream a video feed of Commission hearings to Camp 7 . . . , with the concomitant ability to confer with counsel during such hearings via privileged video-telephone conference or telephone call; and, to use alternative means of transporting Mr. al Hawsawi to hearings and to his counsel meetings.” *Id.* at 1. Defense counsel for Mr. Hawsawi argue that the Accused’s “pain and . . . injuries are now squarely interfering with [his] ability to meet with counsel, to attend Commission hearings and to assist and participate in his defense fully and effectively.” *Id.* at 2. The Defense asserts that the requested accommodations “while not absolutely eliminating the pain and discomfort, can and have helped . . .” and “means Mr. al Hawsawi won’t be forced to choose between the suffering that sitting throughout the day requires while in hearings, and entirely waiving his presence at those hearings and thereby his right to participate and assist in his defense.” *Id.* at 3.

On information and belief, in or about August 2016, Mr. Hawsawi opted for elective surgery that can potentially alleviate much of the pain currently cited within the instant motion. Prior to this date, Mr. Hawsawi had declined the surgery in question due to the gender of the attending physician.

### **5. Law and Argument**

Having previously failed to entangle this Commission in the healthcare management of the Accused, *see* AE 322 (MAH); AE 340 (MAH), the Defense now attempt to do so through an alternative avenue alleging that Mr. Hawsawi’s current health condition is “squarely interfering with [his] ability to meet with counsel, to attend commission hearings and to assist and participate in his defense fully and effectively.” AE 442 (MAH) at 2. Because of this

“interference,” Defense counsel request that this Commission order JTF-GTMO to “allow meetings with counsel at Camp 7 with the appropriate facilities to accommodate such meetings; to stream a video feed of Commission hearings to Camp 7 . . . , with the concomitant ability to confer with counsel during such hearings via privileged video-telephone conference or telephone call; and, to use alternative means of transporting Mr. al Hawsawi to hearings and to his counsel meetings.” *Id.* at 1. However, in making such a request, the Defense fails to cite any statute, regulation, or federal case law precedent that provides for the relief the Defense now seeks. Rather, the Defense relies on threadbare assertions of perceived constitutional violations while providing this Commission with no evidence or applicable legal analysis to support its claims. *See Allaithi v. Rumsfeld*, 753 F.3d 1327, 1334 (D.C. Cir. 2014) (“‘In this circuit, it is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel’s work, create the ossature for the argument and put flesh to bones.’ Two sentences of argument, a threadbare conclusion, and a handful of marginally relevant citations do not provide us with enough to adequately assess the strength of their legal conclusions.”) (internal citations omitted). Absent such, this Commission should continue to afford JTF-GTMO appropriate judicial deference and deny the Defense motion, without oral argument.

### **I. The Supreme Court Requires Judicial Deference to Expert Prison Administrators Regarding Detention Operations**

The U.S. Supreme Court has readily accepted that “[r]unning a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government.” *Turner v. Safley*, 482 U.S. 78 (1987). As such,

[t]he inquiry of federal courts into prison management must be limited to the issue of whether a particular system violates any prohibition of the Constitution, or, in the case of a federal prison, a statute. The wide range of ‘judgement calls’ that meet constitutional and statutory requirements are confided to officials outside of the Judicial Branch of Government.

*Bell v. Wolfish*, 441 U.S. 520, 562 (1979).

Not only does Supreme Court precedent in this area demand judicial deference to prison administrators, it discourages a standard of heightened judicial scrutiny for detention operations, for fear that, “every administrative judgement would be subject to the possibility that some court somewhere would conclude that it had a less restrictive way of solving the problem at hand.” *Thornburgh v. Abbott*, 490 U.S. 401, 411 (1989). Further, the Supreme Court has stated that “courts must defer to the judgment of correctional officials unless the record contains substantial evidence showing their policies are an unnecessary or unjustified response . . . .” *Florence v. Bd. Of Chosen Freeholders*, 132 S. Ct. 1510, 1513-14 (2012); *see also Hatim v. Obama*, 760 F.3d 54, 60 (D.C. Cir. 2014) (applying the Supreme Court’s test in *Turner* and holding that challenges to prison administration require the prisoner to disprove the validity of the prison regulation). Moreover, the burden is on the Accused, who is challenging the policy to show that the policy is unreasonable. *Overton v. Bazzetta*, 539 U.S. 126, 132 (2003) (“The burden, moreover, is not on the state to prove the validity of prison regulations but on the prisoner to disprove it.”); *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 350 (1987) (observing that the court of appeals failed to give appropriate deference to prison authorities when it “plac[ed] the burden on prison officials to disprove the availability of alternatives”).

## **II. The D.C. Circuit Has Previously Demonstrated Judicial Deference to JTF-GTMO Regarding the Relief Requested Within the Defense Motion**

In an attempt to persuade the Commission to order the relief it seeks, the Defense cites to numerous federal courts opinions<sup>2</sup> in an almost talismanic manner to support its argument.

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<sup>2</sup> The Prosecution notes that the Defense cites to *United States v. Zannino*, 895 F.2d 1, 13-16 (1st Cir. 1990), *United States v. Brown*, 821 F.2d 986, 988 (4th Cir. 1987), and *United States v. Saltzman*, 153 F. Supp. 3d 245 (D.D.C. 2016) for the premise that “[j]udicial oversight in this arena is common-place . . . .” AE 442 (MAH) at 9. However, none of the cases cited by the Defense sought any modification to a detention facility’s policies/procedures. Rather, each of them evaluated the necessity of medical accommodations in the courtroom itself, to include appropriate continuances to allow for stabilization of the defendant. *See Zannino*, 895 F.2d at 12-16 (holding the district court did not abuse its discretion where it denied a defense request for continuance on the basis of the defendant’s ill health); *Brown*, 821 F.2d at 988-990 (holding the district court did not abuse its discretion in denying the Defense request for continuance based on medical concerns expressed by the defendant and where the “court told defense counsel that it would take whatever measures necessary to protect Brown’s health at trial, such as having a physician present and scheduling breaks.”); *Saltzman*, 153 F. Supp.3d at 252 (holding that

However, despite the case law it cites, the Defense ignores critical federal court precedent, binding on this Commission, which already forecloses certain relief requested by the Defense.

In *Hatim*, the United States Court of Appeals for the District of Columbia encountered an identical request to one the Defense now brings before this Commission. *See Hatim*, 760 F.3d 41. In that case, Guantanamo Bay detainees challenged two policies they claimed placed an undue burden on their ability to meet with their lawyers, to include a policy that specified that attorney-client meetings must be held in Camp Echo. *Id.* at 56. Prior to September 2012, “detainees at Guantanamo Bay would meet with visitors in Camp Echo, to which they were driven in vans, or occasionally in Camps 5 and 6, the camps where most detainees are housed.” *Id.* at 56. Guantanamo Bay detainees argued that the new policy requiring *all* meetings to be held in Camp Echo “ha[d] the purpose and effect of discouraging meetings with their counsel” and they “claimed that their poor health made it difficult to make the trip by van to meet with their lawyers in Camp Echo . . . .” *Id.* at 56. Reversing the D.C. District Court’s ruling allowing “ill and injured detainees . . . to meet with their lawyers in the housing camps,” the D.C. Circuit found that,

. . . it is reasonable to require that all meetings between detainees and their visitors, including counsel, take place in Camp Echo, which requires fewer guards than the housing camps. Each meeting room in Camp Echo, unlike those in the detainees’ housing camps, has a restroom and a space for prayer, which means that guards are not needed to transfer detainees mid-meeting. And the video monitoring in Camp Echo eliminates the need to post guards outside each meeting room, as is necessary in Camps 5 and 6. Guards who would have to stand sentry if the visits took place in a housing camp are instead available for postings elsewhere at Guantanamo, enhancing the facility’s overall security.

*Id.* at 60. In arriving at this conclusion, the D.C. Circuit stated, “[t]he district court failed to defer to the government’s justifications for the new policies, concluding that they were not rationally related to a legitimate government interest . . . .” and that the district court

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“severance and a temporary continuance creates no additional risk to the public welfare, and . . . will not impinge on ‘the Government’s right to present its charges and to fulfill its public duty’” where the Defendant was “a very sick man with serious and sometimes life-threatening conditions . . . .”).

“misapprehend[ed] something fundamental about challenges to prison administration: ‘The burden . . . is not on the state to prove the validity of prison regulations but on the prisoner to disprove it.’” *Id.* at 60 (citing *Overton*, 539 U.S. at 132; *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 350 (1987)).

Here, Defense counsel for Mr. Hawsawi requests that the Commission order JTF-GTMO to “allow meetings with counsel at Camp 7 with the appropriate facilities to accommodate such meetings,” much like that which was requested in *Hatim*. However, given the D.C. Circuit’s ruling in that case, this Commission must afford JTF-GTMO appropriate judicial deference here and deny the Defense requested relief.

### **III. The Accused Must Physically Attend the Commission or Voluntarily Waive Their Right to Be Present and There Can Be No Ambiguity**

In addition to requesting the ability to hold attorney-client meetings at Camp 7, Defense counsel for Mr. Hawsawi also request that the Commission order JTF-GTMO “to stream video feed of Commission hearings to Camp 7 . . . with the concomitant ability to confer with counsel during such hearings via privileged video-telephone conference or telephone call.” *Id.* at 1. The Defense argues that “[f]acilitating viewing capabilities for Commission hearings and the means to communicate during Commission hearings means Mr. al Hawsawi won’t be forced to choose between the suffering that sitting throughout the day requires while in the hearings, and entirely waiving his presence at those hearings and thereby his right to participate and assist in his defense.” *Id.* at 2-3. However, in doing so, the Defense fails to address not only the technical issues that surround such a request,<sup>3</sup> but more importantly the readily apparent “presence of the accused” concerns that should give this Commission serious pause before granting such relief. Given such issues, this Commission should deny the Defense request and maintain the status quo regarding the Accused’s presence at Commission hearings as specified in AE 037H, Order.

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<sup>3</sup> The Prosecution incorporates by reference its facts, law, and argument as stated within the Government’s filings in the AE 183 motion series.

On 17 October 2012, following substantial litigation on the subject, this Commission issued AE 037H, *Corrected Order, Government Motion Regarding Accused's Presence During Commission Proceedings*. Within its Order, the Commission made clear that "an accused may waive the right to be present and a proceeding may continue in the absence of the accused following a military judge's determination the accused has waived the right to be present." AE 037H at 3. In doing so, the Commission ordered "[t]hat, for pretrial proceedings before this Commission, the accused have a right, provided by statute, to be voluntarily absent from the Commission; [and], [t]hat before the accused are to be permitted to be voluntarily absent, each accused must participate in an on-the-record inquiry to ensure he understands his individual rights . . . ." AE 037H at 3-4. While not addressed within the Commission's Order, "several appellate courts have held that the term 'present' means physical presence in the same location as the judge (that is, a defendant must be physically in the courtroom) . . . ." *United States v. Wright*, 342 F. Supp. 2d 1068, 1069 (M.D. Ala. 2004) (citing *United States v. Torres-Palma*, 290 F.3d 1244, 1248 (10th Cir. 2002); *United States v. Lawrence*, 248 F.3d 300, 303-04 (4th Cir. 2001); *United States v. Navarro*, 169 F.3d 228, 235-39 (5th Cir. 1999)).

The Accused have the right to be physically present at all Commission hearings, or they may waive such right during certain pre-trial hearings. However, the Accused and their Defense counsel may not create a hybrid third option whereby the Accused may be "present" without actually being physically present. In AE 037,<sup>4</sup> the Prosecution strongly asserted that "[t]he Accused in this Military Commission should be required to attend all stages of these proceedings" and noted that "[t]he Supreme Court has in the past frowned upon waivers of the right to attend proceedings where a defendant remains in custody and is charged with a capital offense." AE 037 at 6, 8 (citing *Diaz v. United States*, 223 U.S. 442, 455-56 (1912) (citing the then-prevailing rule permitting voluntary waiver of right to attend proceedings only "where the offense is not capital"); *Illinois v. Allen*, 379 U.S. 337, 341 (1970) (holding that a disruptive

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<sup>4</sup> The Prosecution incorporates by reference its law and argument as stated in AE 037.

capital defendant could be removed from the courtroom, but the judge must continue to offer every opportunity for the defendant to return)). Given U.S. Supreme Court precedent on the issue, and the fact that convictions derived from trials *in absentia* have been reversed, even after what was believed to be voluntary waiver of presence, *see United States v. Price*, 48 M.J. 181 (C.A.A.F. 1998), this Commission should decline to enter such a gray area and reject an Accused's virtual presence at Commission hearings, especially one that is *capital* in nature. Instead, the Commission should maintain its stated position on the record that the Accused must sign the voluntary absence waiver form or must physically attend the Commission hearing.<sup>5</sup> *See* Unofficial/Unauthenticated Transcript ("Tr.") at 9550-9574, 12609.

#### **IV. The Defense Have Failed to Demonstrate that an Alternative Means of Transportation is a Necessary or Valid Alternative**

Lastly, Defense counsel for Mr. Hawsawi request that this Commission order JTF-GTMO to "use alternative means of transporting Mr. al Hawsawi to hearings and to his counsel meetings." AE 442 (MAH) at 1. The Defense argue that "the current method of transporting Mr. al Hawsawi unnecessarily increases his pain due to the physical characteristics of the vehicle to transport him," *id.* at 2, and thus forces him "to [regularly] miss Commission hearings and attorney-client visits because of his weakened physical condition, and the pain of injuries." *Id.* at 1. However, in making this assertion, the Defense fails to offer any evidence that the means of transportation currently utilized by JTF-GTMO is indeed "interfering with Mr. al Hawsawi's ability to meet with counsel, to attend Commission hearings and to assist and participate in his defense fully and effectively." *Id.* at 2. Rather, all available evidence, as detailed below, indicates that the means of transportation currently utilized has had minimal, if no, impact on the Accused choosing to meet with his counsel or attend Commission hearings.

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<sup>5</sup> The Prosecution notes that the Accused are not required to physically remain within the courtroom during certain pre-trial Commission hearings, but can also choose to monitor the Commission proceedings from their holding cells in the ELC. The capability to monitor Commission sessions does not currently exist at Camp 7.

As such, where the Defense has failed to meet its burden, this Commission should deny the Defense motion and the relief it seeks.

Despite lacking in evidence, the Defense asserts that “[t]he resulting pain [Mr. Hawsawi] experiences from sitting for prolonged periods following this transportation has often compelled him to cancel attorney meetings and to absent himself from sessions of the Commission.” *Id.* at 5. However, available evidence does not support this claim. According to records maintained by JTF-GTMO, from 1 January through 18 August 2016, Defense counsel for Mr. Hawsawi requested 192 meetings with the Accused. *See* Attachment B. Of those requested meetings, JTF-GTMO approved 190 and denied 2. Of those approved by JTF-GTMO, 105 attorney-client meetings were in fact held with Mr. Hawsawi, with 59 meetings cancelled by his Defense counsel and only 26 meetings refused by Mr. Hawsawi. *See* Attachment B. Further, based on available evidence from 1 January 2016 to 17 August 2016, during times where the Military Commission was in session (17 calendar days), the Accused has either attended the Commission hearing or chose to attend an attorney-client meeting in lieu of attending court that day on all except approximately two occasions. *See* Attachment C.<sup>6</sup> In all instances of refused attorney-client meetings or non-attendance of Military Commission sessions, there is no record indicating the actual reason for Mr. Hawsawi’s voluntary decision to absent himself.

Based on this information, it cannot be concluded that Mr. Hawsawi is “regularly forced to miss Commission hearings and attorney-client visits because of his weakened physical condition, and the pain of his injuries” as asserted by the Defense. AE 442 (MAH) at 2. And even if the Defense could prove the mode of transportation impacts the Accused’s willingness to travel to meet with his counsel, as averred by Defense counsel, the difference in cushion provided [REDACTED] would likely not “absolutely

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<sup>6</sup> Attachment C contains redactions of those entries not applicable to Mr. Hawsawi. Additionally, highlighted entries are those occasions where Mr. Hawsawi attended a legal meeting in lieu of a Commission hearing.

[REDACTED]

eliminate[e] the pain and discomfort” allegedly experienced by Mr. Hawsawi while in transport. *Id.* at 3. This Commission should continue to defer to JTF-GTMO regarding the means of transportation utilized to transport the Accused, and the location of the attorney meetings, and deny the Defense’s requested relief, especially in light of the elective medical procedure that Mr. Hawsawi has recently chosen to undergo.

**V. The Conditions of Confinement at the Detention Facilities at U.S. Naval Station Guantanamo Bay, Cuba Meet or Exceed All U.S. Obligations Under International Law and U.S. Domestic Law and Policy**

Despite Defense counsel’s repeated assertions before this Commission, the conditions of confinement at the detention facilities at U.S. Naval Station Guantanamo Bay, Cuba “meet or exceed all U.S. obligations under international law.” 2013 CAT Report ¶ 216. In Executive Order No. 13,492, the President directed the Secretary of Defense to undertake a comprehensive review of the conditions of confinement at Guantanamo Bay, Cuba to assess compliance with Common Article 3. *See* 2013 CAT Report ¶ 218; *see generally* Exec. Order No. 13,492 § 6 (“The Secretary of Defense shall immediately undertake a review of the conditions of detention at Guantanamo to ensure full compliance with this directive. Such review shall be completed within 30 days and any necessary corrections shall be implemented immediately thereafter.”); Memorandum from Robert M. Gates, Sec’y of Def., to the Vice Chief of Naval Operations, *Review of Department Compliance with President’s Executive Order on Detainee Conditions of Confinement* (Feb. 2, 2009) (File No. OSD 01013-09) (directing the Vice Chief of Naval Operations “to conduct a review of the conditions of confinement” at the detention facilities at Guantanamo “to ensure that all detainees at Guantanamo are held ‘conformity with all applicable laws governing the conditions of confinement, including Common Article 3 of the Geneva Conventions’”).

Adm. Patrick M. Walsh, the then-Vice Chief of Naval Operations, assembled a team of experts from throughout the Department of Defense to conduct an independent assessment,

which considered all aspects of detention operations,<sup>8</sup> to include detainee healthcare management, at Guantanamo.<sup>9</sup> 2013 CAT Report ¶ 218. On 20 February 2009, Adm. Walsh submitted his report to the Secretary of Defense, who endorsed it and promptly forwarded it to the President. *See* U.S. DEP’T OF DEF., REVIEW OF DEPARTMENT COMPLIANCE WITH PRESIDENT’S EXECUTIVE ORDER ON DETAINEE CONDITIONS OF CONFINEMENT (Feb. 20, 2009) (“WALSH REPORT”) (AE 303B (GOV), Attachment C).

The Walsh Report concluded that “the conditions of confinement in Guantanamo are in conformity with Common Article 3 of the Geneva Conventions” and that they “also meet the directive requirements of Common Article 3 of the Geneva Conventions.” WALSH REPORT at 4; U.S. Dep’t of Def., News Transcript, DoD News Briefing with Adm. Walsh from the Pentagon (Feb. 23, 2009) (statement of Adm. Patrick M. Walsh, Vice Chief of Naval Operations) (“We conclude that the conditions at Guantanamo conformed to Common Article 3.”). Specific as to detainee medical care, the Report found that, (1) “[t]he scope, quality and documentation of care provided to detainees are similar, and in most cases identical, to care received by U.S. Armed

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<sup>8</sup> The Walsh Report “examine[d] each element of conditions of detention from detainee arrival at Guantánamo to transfer/repatriation.” Specifically, the 27 “element[s] of conditions of detention” examined were as follows: (1) Shelter; (2) Hygiene; (3) Clothing and Bedding; (4) Food and Water; (5) Religious Practice; (6) Recreation; (7) Sleep; (8) Detainee Discipline System; (9) Detainee Compliance with Camp Rules and Vetting Criteria; (10) Intellectual Stimulation; (11) Mail; (12) Protection from Violence; (13) Protection from Violence—Use of Force; (14) Protection from Violence—Forced Cell Extractions; (15) Protection from Violence—Shackling; (16) Protection from Sensory Deprivation—Solitary Confinement; (17) Protection from Sensory Deprivation—Human-to-Human Contact; (18) Protection from Humiliation; (19) Health Care Services—Quality of Care and Access; (20) Medical/Dental Confidentiality of Medical Records and Information; (21) Medical Ethics—Medical Treatment for Hunger Strikers; (22) Healthcare Personnel Management—Behavioral Science Consultants; (23) Interrogation; (24) Outside Access to Detainees; (25) Attorney Access to Detainee-Clients; (26) Detainees Ordered or Approved for Release; and (27) Repatriation/Transfer. *See* WALSH REPORT at 16.

<sup>9</sup> The Walsh Report examined the following nine detention facilities at Guantanamo, which were then in use during February 2009: “Communal Living Camp – Camp 4; Maximum Security Camps – Camps 1 through 3, 5 (including Camp 5 Echo Block), 6, and 7; Pre-Release-Transfer – Camp Iguana; and, Limited Use – Camp Echo.” WALSH REPORT at 11, 17. Five detention facilities “are currently in use: Camp Echo, Camp Iguana, and Camps 5, 6, and 7.” REPORT FROM THE U.S. GOV’T ACCOUNTABILITY OFF., TO THE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE, U.S. SENATE, GUANTÁNAMO BAY DETAINEES: FACILITIES AND FACTORS FOR CONSIDERATION IF DETAINEES WERE BROUGHT TO THE UNITED STATES 12 (Nov. 14, 2012) (Rep. No. GAO-13-31).

Forces personnel”; (2) [p]rimary care and medical specialty services are provided to meet detainees’ health care needs in a timely manner”; (3) “[t]he [Joint Medical Group] provides medical care based upon medical need and operates independently of the [Joint Detention Group] or [Joint Intelligence Group]”; and, (4) “[m]edical personnel provide pertinent information during the vetting process the helps the JDG make decisions about moves between and within the camps, and provides requests and advice for medically necessary items for detainees.” WALSH REPORT at 52-53. It also noted that “the chain of command responsible for the detention mission at Guantanamo consistently seeks to go beyond a minimalist approach to compliance with Common Article 3, and endeavors to enhance conditions in a manner as a humane as possible consistent with security concerns.” WALSH REPORT at 4. The Joint Task Force at Guantanamo “continually reviews its operations to ensure humane treatment and consistency with the Geneva Conventions and makes improvement wherever possible for the comfort of detainees and the safety of the guard force.” 2013 CAT Report ¶ 218. Since issuance of the Walsh Report in February 2009, the United States “has continued to ensure that the Guantanamo facility comports with Common Article 3 and all other applicable laws.”<sup>10</sup> 2011 ICCPR Report ¶ 519.

## **6. Conclusion**

As demonstrated above, the Government takes very seriously its responsibility to provide for the safe and human care of detainees at Guantanamo Bay and will afford detainees medical accommodations where possible. However, whereas here, the requested accommodations have been previously foreclosed by the D.C. Circuit, are legally unsound, and lack any evidence to

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<sup>10</sup> Within their motion, Defense counsel indirectly assert that the medical care currently received by Mr. Hawsawi is a violation of the 8th Amendment. *See* AE 442 (MAH) at 12-14. However, in doing so, the Defense fail to provide this Commission with any legal analysis in support of this contention. *See Durmer v. O’Carroll*, 991 F.2d 64, 67 (3d Cir. 1993) (“Indeed, prison authorities are accorded considerable latitude in the diagnosis and treatment of prisoners. . . . In order to succeed in an action claiming inadequate medical treatment, a prisoner must show more than negligence; he must show ‘deliberate indifference’ to a serious medical need.”) (internal citations omitted).



# ATTACHMENT A



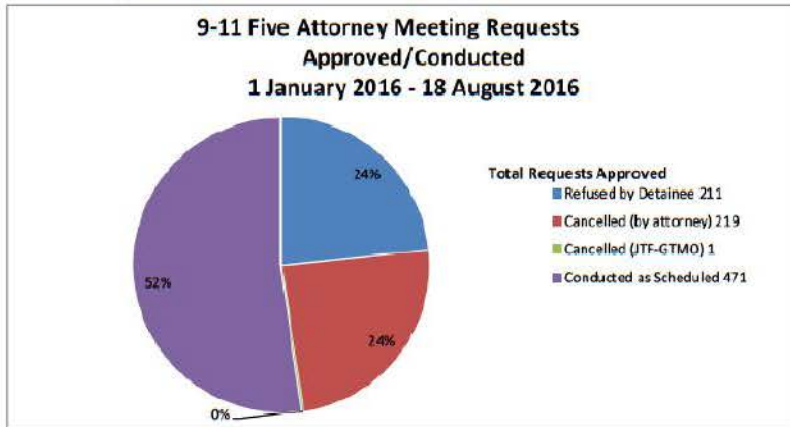
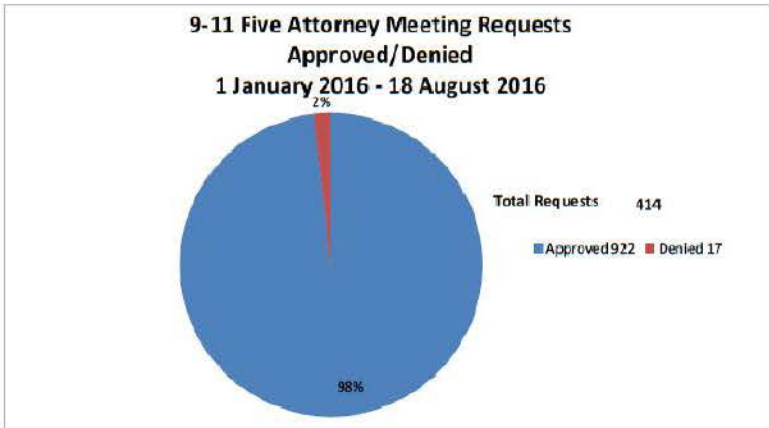
# ATTACHMENT B

Current as of 18 AUG 2016

Filed with TJ  
26 August 2016

	Total
Requests	937
Approved	922
Denied	17
Refused by Detainee	211
Cancelled (by attorney)	219
Cancelled (JTF-GTMO)	1
Conducted as Scheduled	471



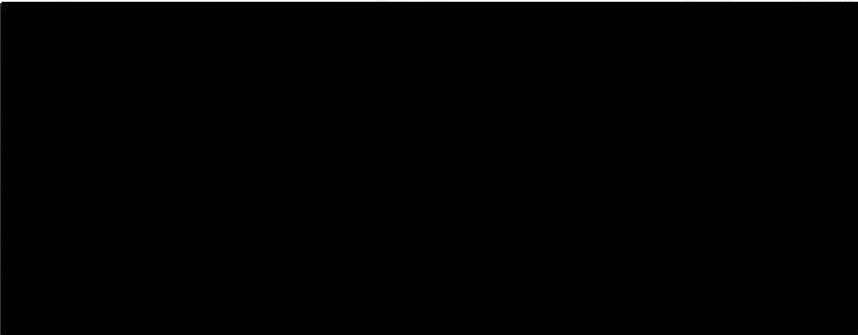
	10K11	10K13	10K14	10K18	10K24	Total
Requests	192	128	176	208	218	922
Approved	190	124	176	201	216	907
Denied	2	4	0	7	2	15
Refused by Detainee	26	40	74	30	39	209
Cancelled (by attorney)	59	26	60	42	33	220
Cancelled (JTF-GTMO)	0	0	0	0	1	1
Conducted (approved - refused - cancelled )	105	58	42	129	143	477



# ATTACHMENT C

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**HVD LEGAL MEETING IN-SCREENINGS**

Date	ISN	Visitor	IN	OUT
				
12-Jan-16	10011	Ruiz, Walter	1223	1446
				
13-Jan-16	10011	Ruiz, Walter	1230	1540
				

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HVD LEGAL MEETING IN-SCREENINGS

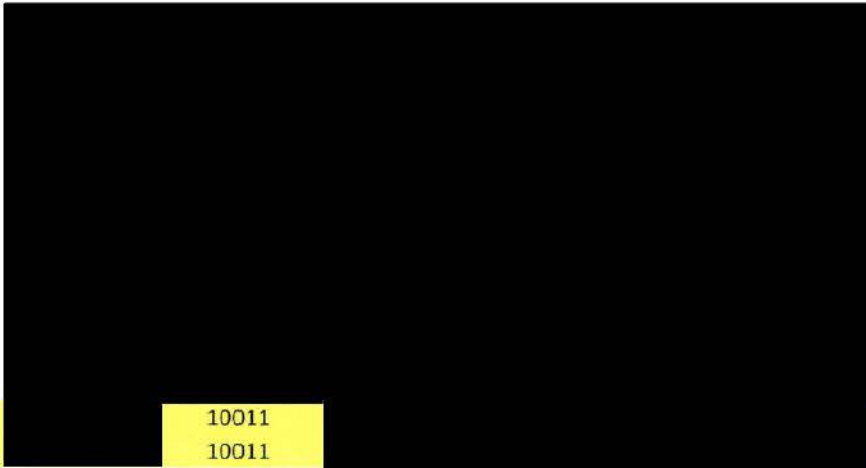
[REDACTED]				
	10011			
31-Jan-16	10011	Ruiz, Walter	903	1145
31-Jan-16	10011	Gleason, Sean	915	1145
31-Jan-16	10011	Ruiz, Walter	1226	1600
31-Jan-16	10011	Gleason, Sean	1226	1600
	10011			
1-Feb-16	10011	Ruiz, Walter	855	1130
	10011			
1-Feb-16	10011	Gleason, Sean	903	1130
1-Feb-16	10011	Ruiz, Walter	1227	1415
1-Feb-16	10011	Gleason, Sean	1227	1415
	10011			
[REDACTED]				
9-Feb-16	10011	Ruiz, Walter	905	1131
	10011			
9-Feb-16	10011	Ghannam, Jess Dr.	905	1131
	10011			
9-Feb-16	10011	Ghannam, Jess Dr.	1235	1609
[REDACTED]				
	10011			
10-Feb-16	10011	Ghannam, Jess Dr.	905	1136
[REDACTED]				

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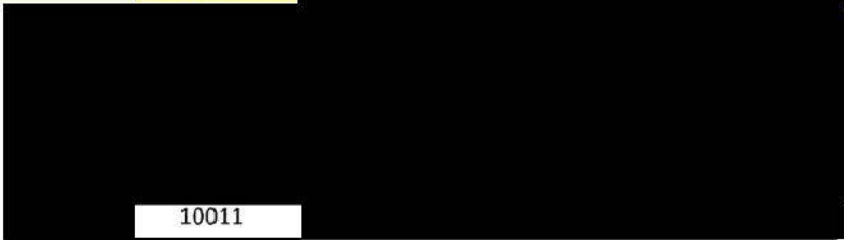


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HVD LEGAL MEETING IN-SCREENINGS



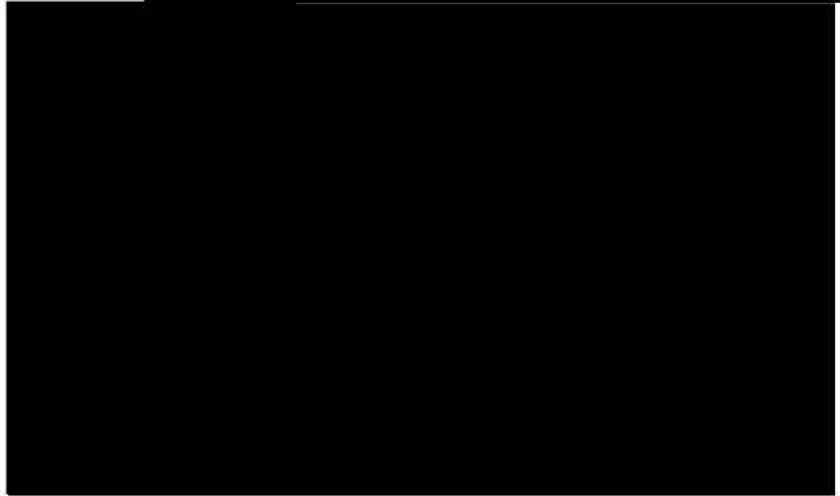
10011  
10011



10011



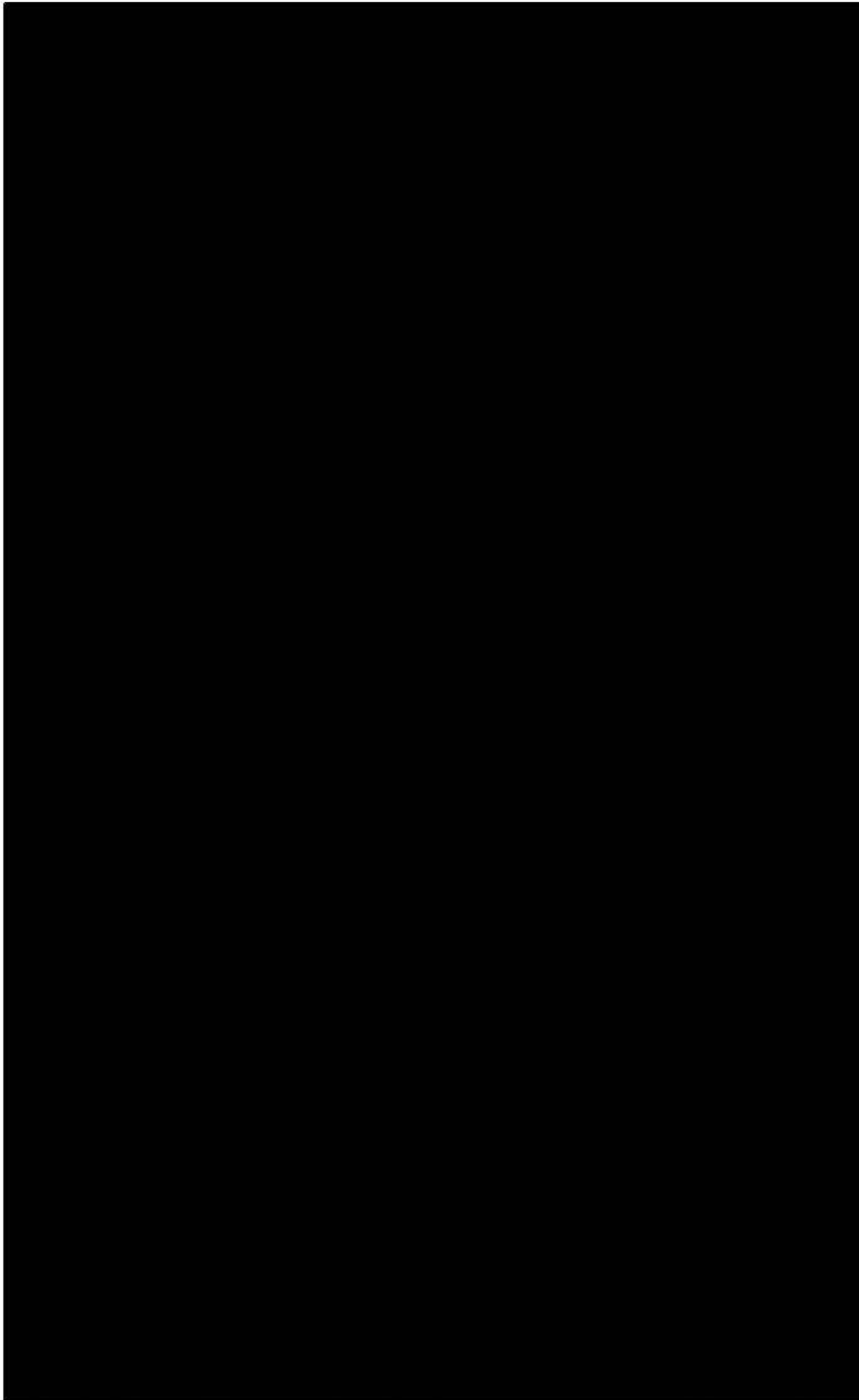
10011  
10011  
10011



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**HVD LEGAL MEETING IN-SCREENINGS**



22-Mar-16      10011      Lachelier, Suzanne      0907      1235

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**HVD LEGAL MEETING IN-SCREENINGS**

	10011			
22-Mar-16	10011	Lachelier, Suzanne	1339	1631
	10011			
	10011			
23-Mar-16	10011	Lachelier, Suzanne	1334	1625
	10011			
30-Mar-16	10011	Gleason, Sean LTC	0855	10011
	10011			
2-Apr-16	10011	Gleason, Sean LTC	0855	1130
4-Apr-16	10011	Gleason, Sean LTC	0850	1230
4-Apr-16	10011	Ruiz, Walter	0900	1230

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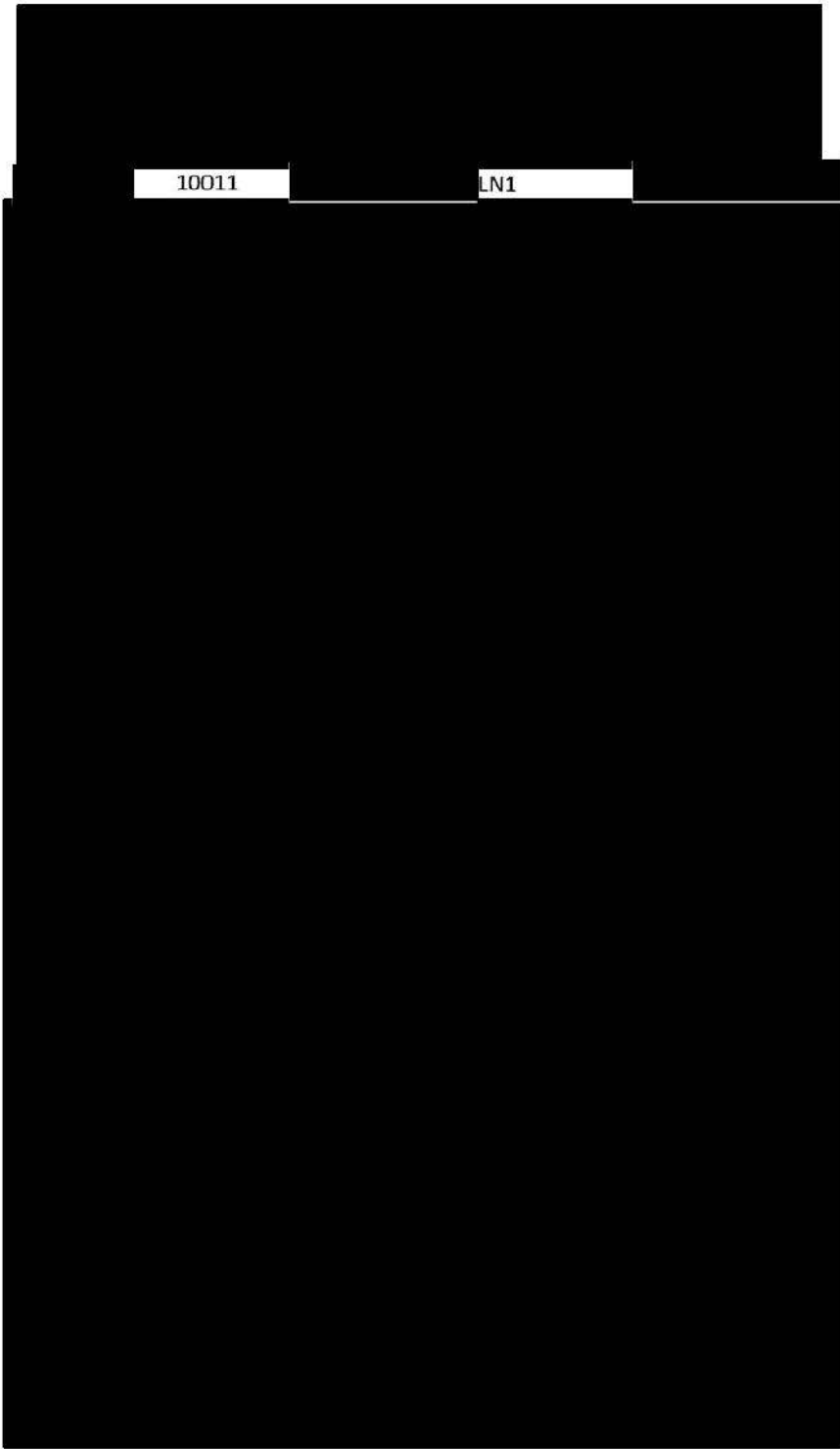
**HVD LEGAL MEETING IN-SCREENINGS**

[REDACTED]	10011	[REDACTED]		
4-Apr-16	10011	Ruiz, Walter	1327	1623
[REDACTED]	10011	[REDACTED]		
4-Apr-16	10011	Gleason, Sean LTC	1358	1623
[REDACTED]				
5-Apr-16	10011	Ruiz, Walter	0858	1231
[REDACTED]	10011	[REDACTED]		
5-Apr-16	10011	Gleason, Sean LTC	0908	1231
[REDACTED]				
5-Apr-16	10011	Ruiz, Walter	1325	1525
5-Apr-16	10011	Gleason, Sean LTC	1325	1525
[REDACTED]	10011	[REDACTED]		
[REDACTED]				
6-Apr-16	10011	Ruiz, Walter	0859	1235
6-Apr-16	10011	Gleason, Sean LTC	0859	1235
[REDACTED]	10011	[REDACTED]		
[REDACTED]				

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**HVD LEGAL MEETING IN-SCREENINGS**



10011

LN1

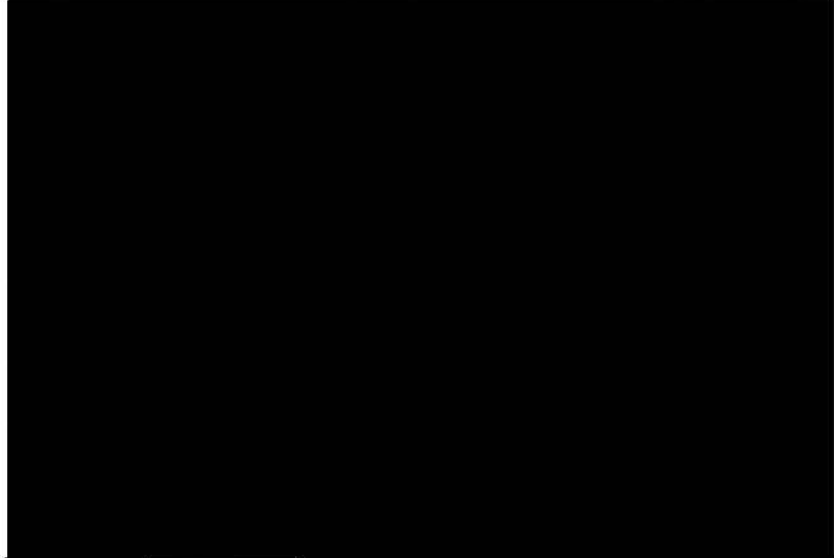
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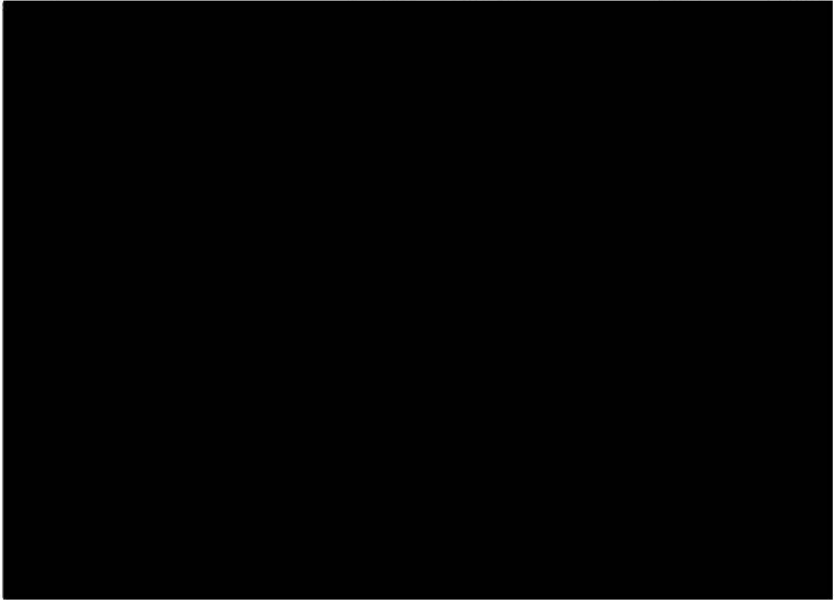
**HVD LEGAL MEETING IN-SCREENINGS**



11-Apr-16      10011      Ruiz, Walter      0900      1228



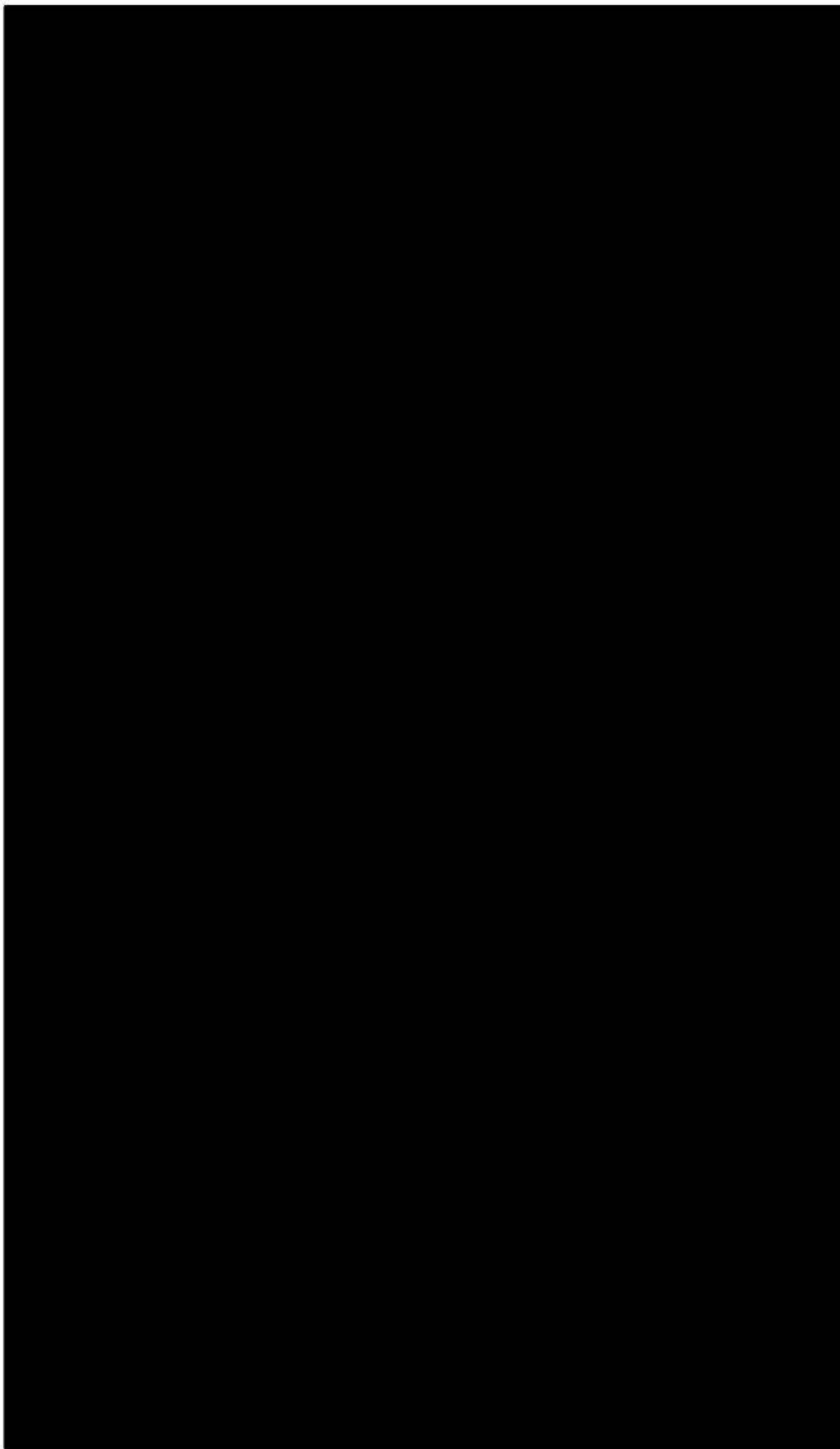
24-Apr-16      10011      Williams, Jennifer LTC      1345      1639



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**HVD LEGAL MEETING IN-SCREENINGS**



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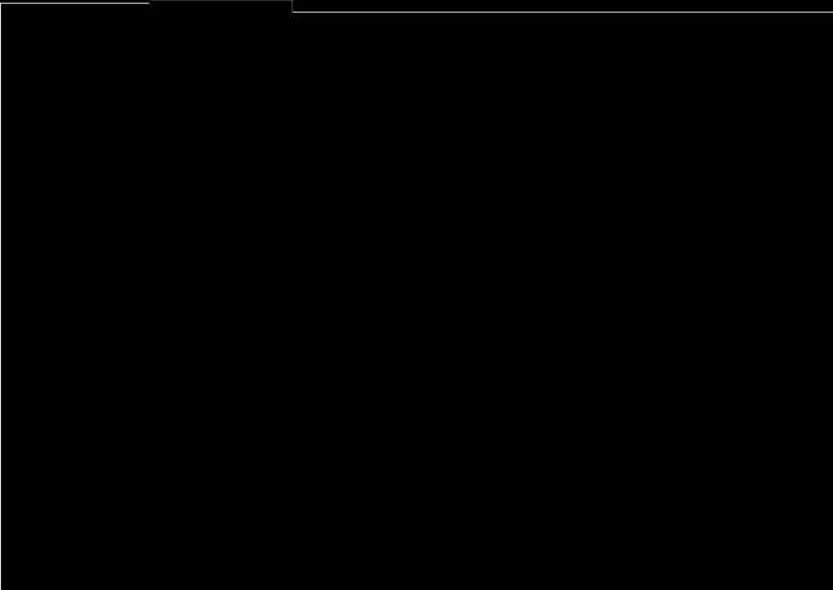
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HVD LEGAL MEETING IN-SCREENINGS



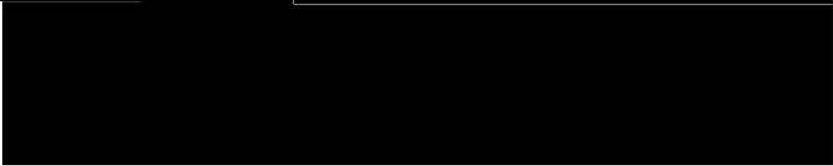
17-May-16	10011	Lachelier, Suzanne	0905	1538
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[REDACTED]	10011	[REDACTED]		
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18-May-16	10011	Lachelier, Suzanne	0927	1220
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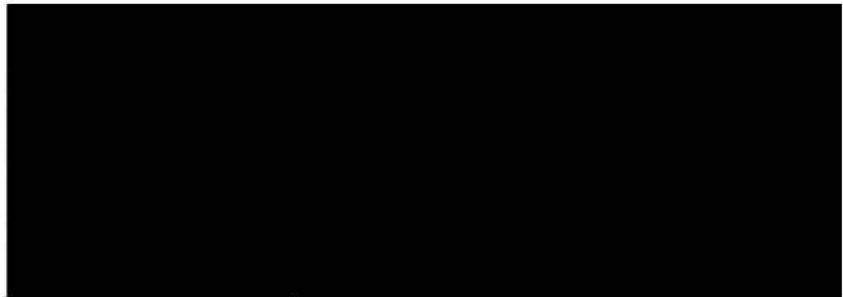
[REDACTED]	10011	[REDACTED]		
[REDACTED]	10011	[REDACTED]		



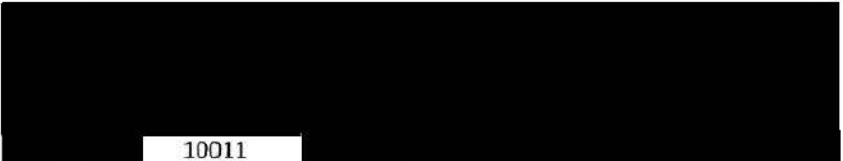
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HVD LEGAL MEETING IN-SCREENINGS



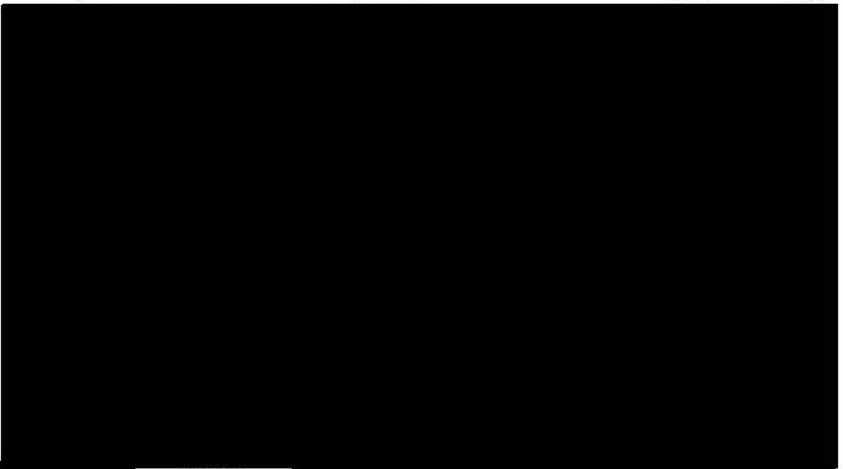
	10011			
25-May-16	10011	Ruiz, Walter	0900	1614



	10011			
25-May-16	10011	Ruiz, Walter	1330	1614
26-May-16	10011	Ruiz, Walter	0858	1230

	10011			
	10011			

26-May-16	10011	Ruiz, Walter	1326	1535
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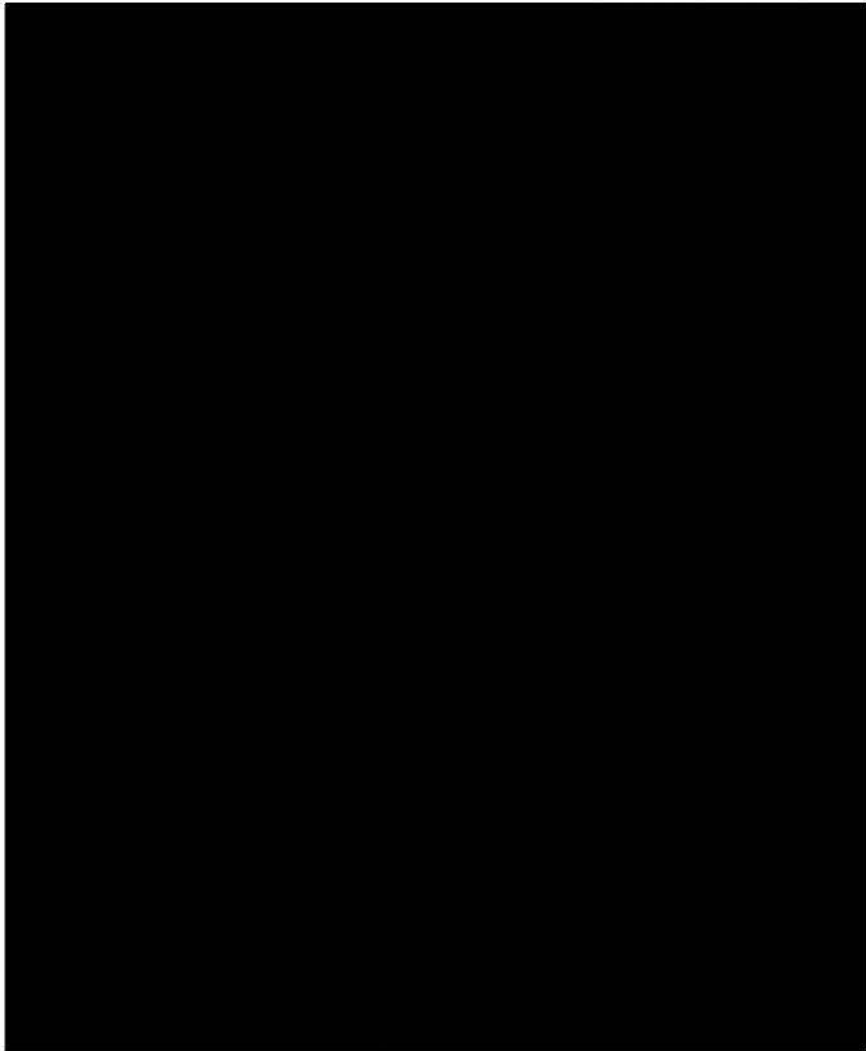
	10011			
28-May-16	10011	Ruiz, Walter	0921	1230
	10011			



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HVD LEGAL MEETING IN-SCREENINGS



29-May-16	10011	Williams, Jennifer LTC	0855	1237
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[REDACTED]	10011	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	10011	[REDACTED]	[REDACTED]	[REDACTED]

29-May-16	10011	Gleason, Sean LTC	1335	1632
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[REDACTED]	10011	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	10011	[REDACTED]	[REDACTED]	[REDACTED]

31-May-16	10011	Ghannam, Jess Dr.	0858	1232
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[REDACTED]	10011	[REDACTED]	[REDACTED]	[REDACTED]
31-May-16	10011	Ghannam, Jess Dr.	1333	1632

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	10011	[REDACTED]	[REDACTED]	[REDACTED]

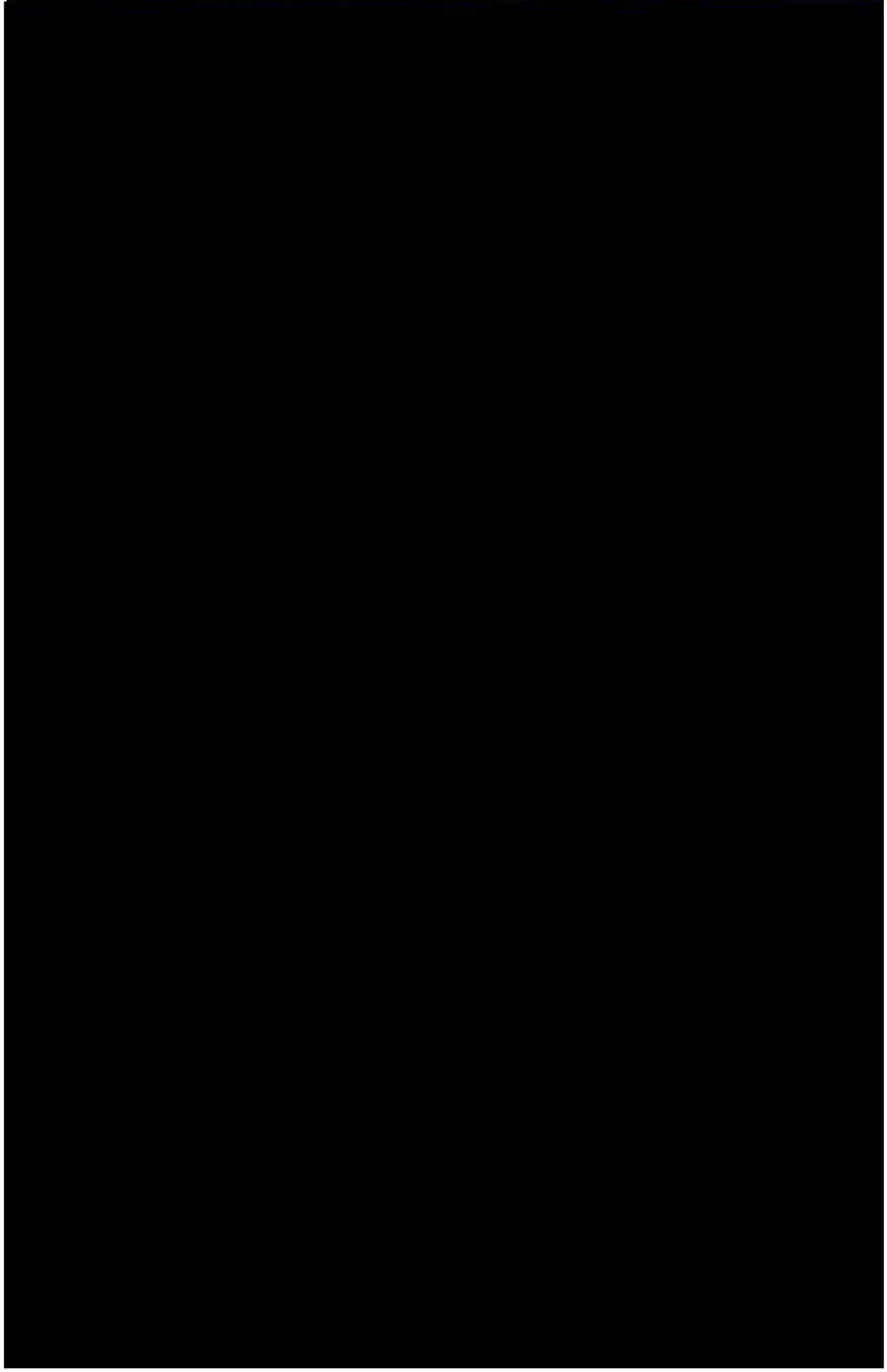
1-Jun-16	10011	Ghannam, Jess Dr.	0855	1235
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**HVD LEGAL MEETING IN-SCREENINGS**

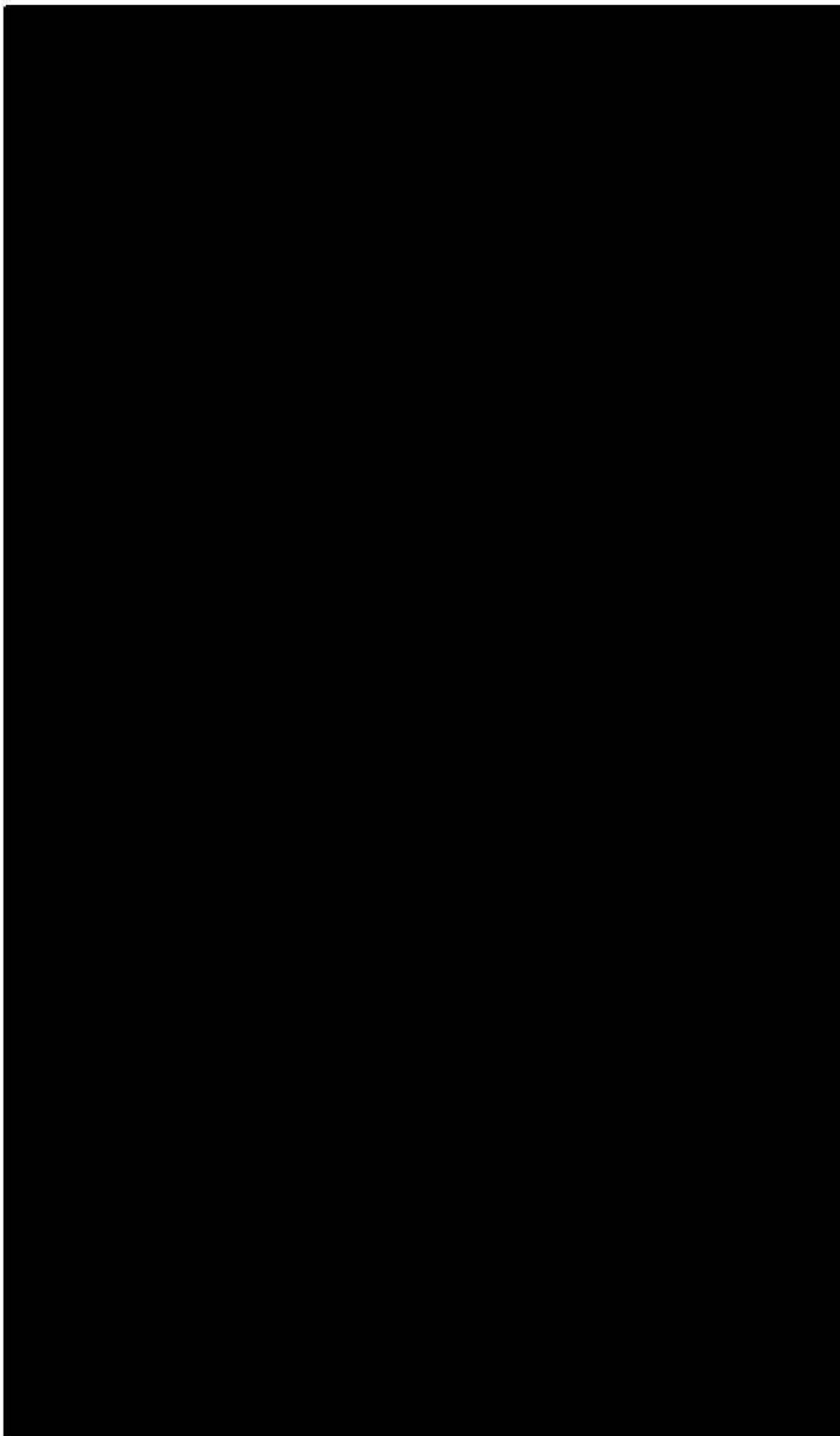
	10011			
	10011			
1-Jun-16	10011	Ghannam, Jess Dr.	1335	1635



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**HVD LEGAL MEETING IN-SCREENINGS**

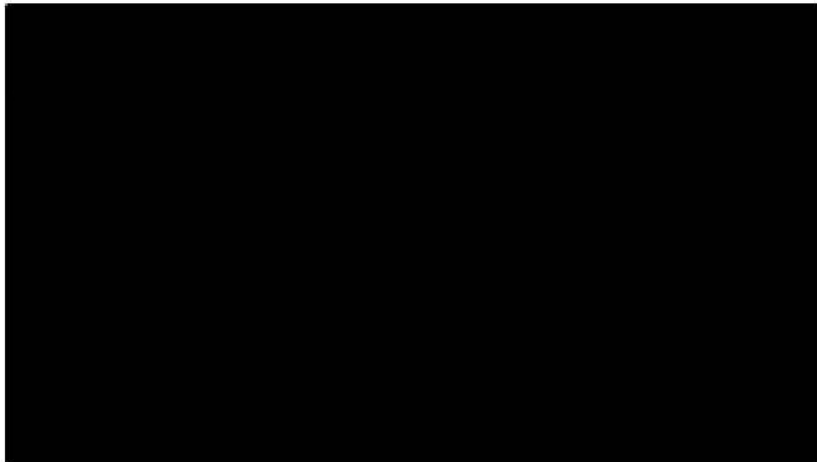


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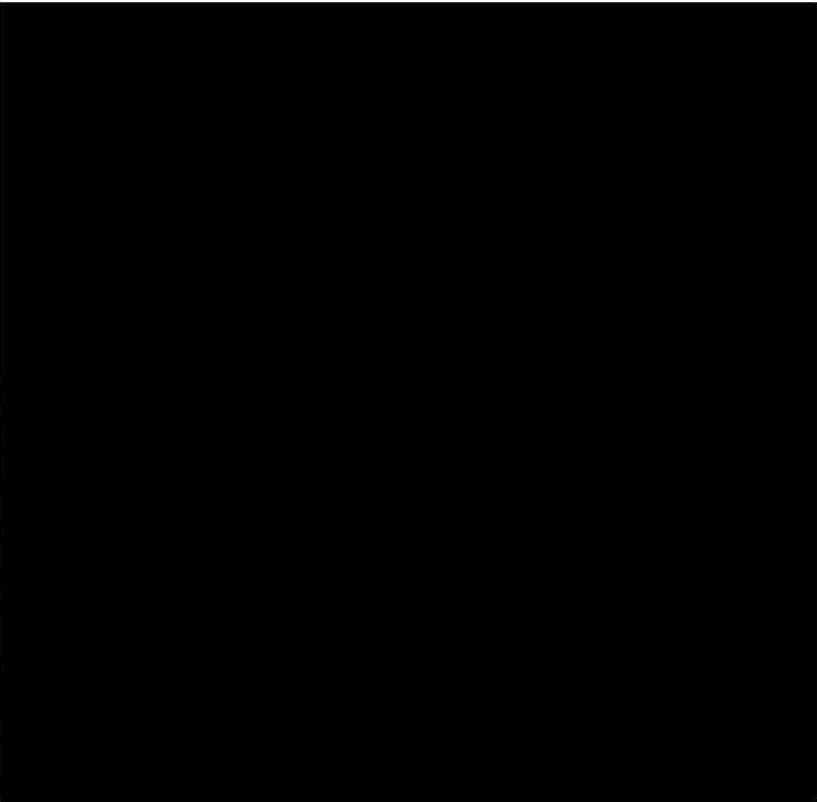


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HVD LEGAL MEETING IN-SCREENINGS



	10011			
	10011			
	10011			
17-Jul-16	10011	Williams, Jennifer LTC	0915	1137

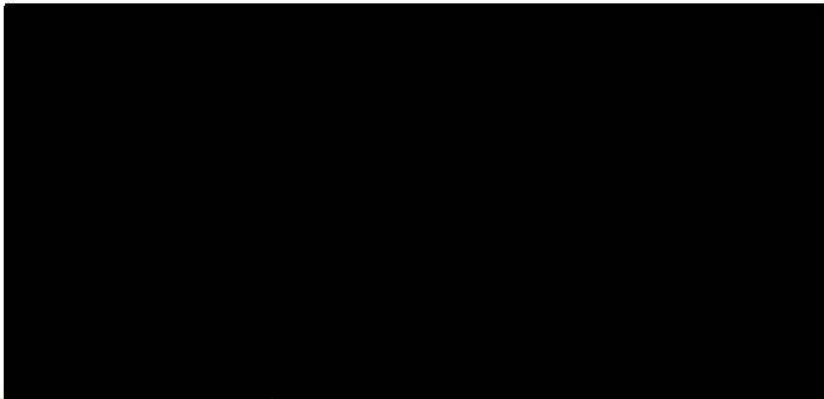


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HVD LEGAL MEETING IN-SCREENINGS

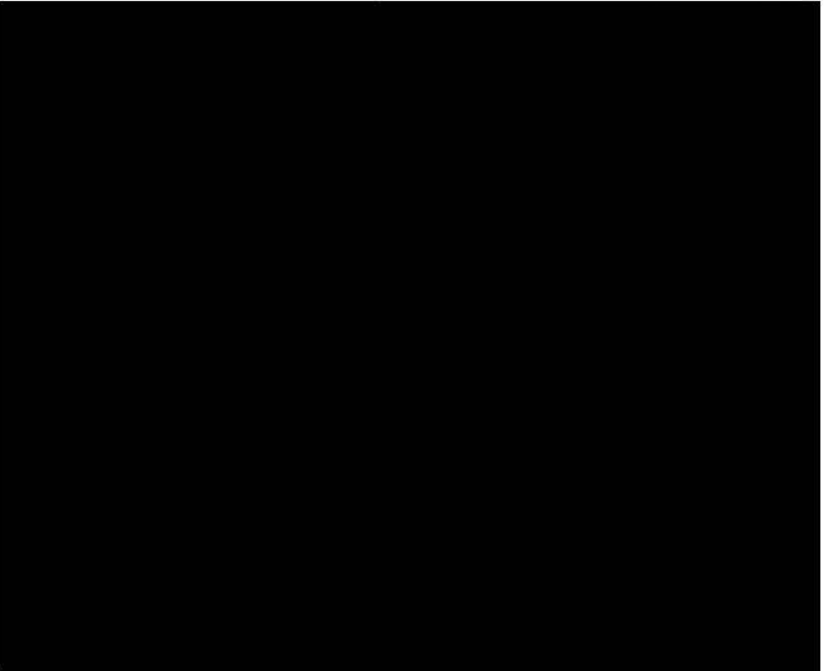


10011  
10011



10011  
10011

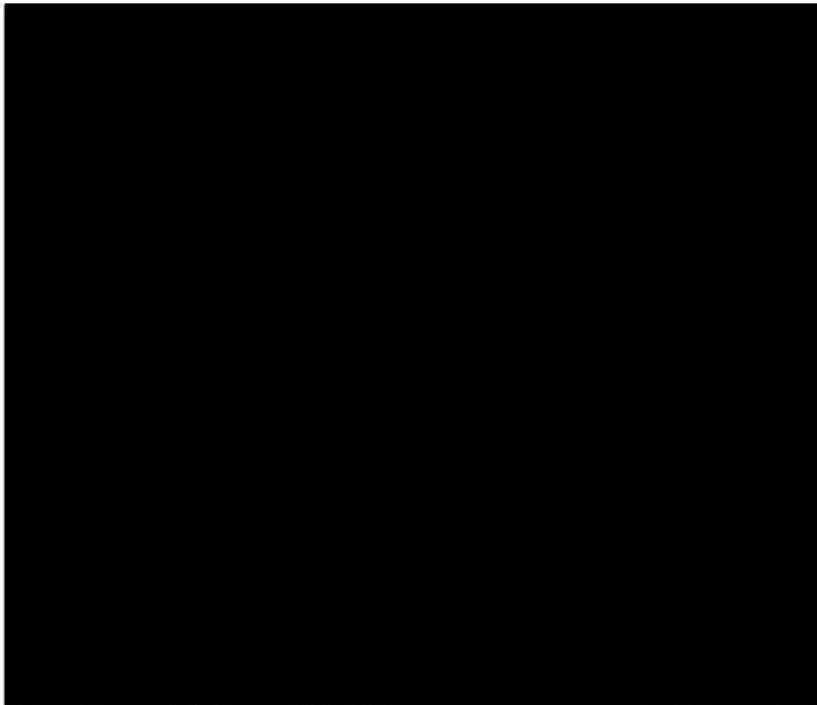
28-Jul-16 10011 Williams, Jennifer LTC 1117 1245



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**HVD LEGAL MEETING IN-SCREENINGS**



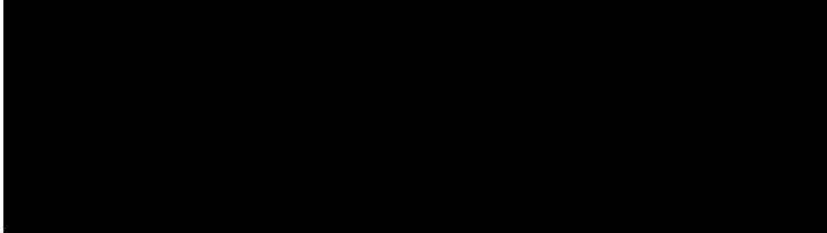
3-Aug-16	10011	Ruiz, Walter	0905	1233
3-Aug-16	10011	Ruiz, Walter	1330	1435



7-Aug-16	10011	Ruiz, Walter	1330	1537
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9-Aug-16	10011	Ghannam, Jess Dr.	0906	1222
9-Aug-16	10011	Ghannam, Jess Dr.	1331	1620



10-Aug-16	10011	Ghannam, Jess Dr.	0908	1235
10-Aug-16	10011	Ruiz, Walter	1335	1421
10-Aug-16	10011	Ghannam, Jess Dr.	1335	1626



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**HVD LEGAL MEETING IN-SCREENINGS**



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