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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

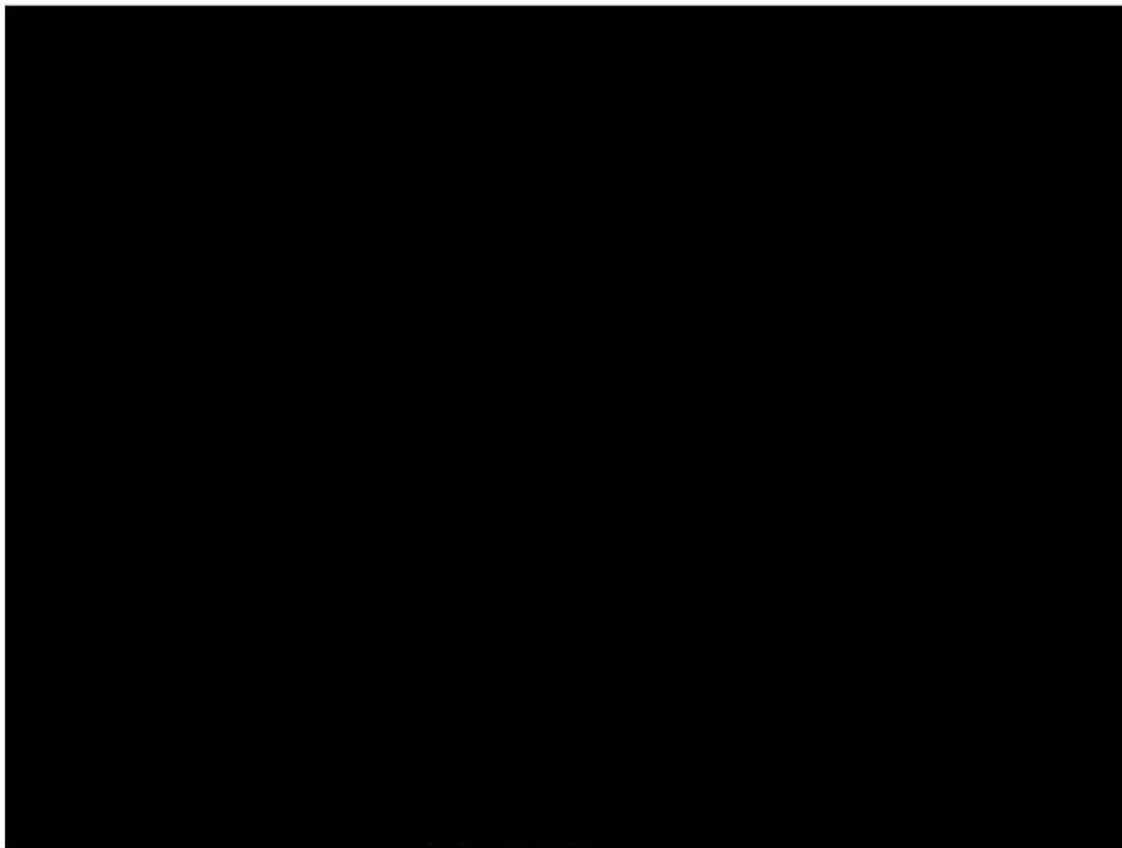
~~(U)~~ AE561 (AAA Sup)

~~(U)~~ Mr. al Baluchi's Supplement to AE561

~~(U)~~ 3 January 2019

1. ~~(U)~~ **Timeliness:** This motion is timely filed, per AE561-8 (RUL)(AAA).

2. ~~(U)~~ **Affirmative Statement:** This supplement adds to the record facts which were not available at the time of filing.



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c. ~~(U)~~ On 30 April 2018, the government provided some discovery regarding the relationship between the CIA and FBI during 2002 through 2007.²

d. ~~(U)~~ Also on 30 April 2018, the government filed AE561A (GOV) Government Response to Defense Motion to Compel Information Regarding Non-CIA Requests for Black Site Interrogation. The government's basic position in this response was that the motion should be denied because it had agreed to provide some responsive discovery in the future.

e. ~~(U)~~ At a MCRE 505(h) hearing on 2 May 2018, the parties agreed to defer consideration of the related AE538 (WBA) Defense Motion to Compel FBI Manual for Terrorism Investigation pending additional government discovery.³

f. ~~(U)~~ At a closed hearing on 3 May 2018, the government stated that it intended to provide additional discovery regarding the relationship between the CIA and FBI during 2002 through 2007.⁴

g. ~~(U)~~ On 1 June 2018, in its AE478CC (GOV) Government Notice of the Status of Discovery, the government represented that it expected to deliver a "few hundred pages" of "responsive information concerning the relationship between the FBI and the CIA during the period between 2002 and 2007" no later than 2 July 2018.⁵

~~(U)~~² See AE524FF; see also AE412R Official/Unauthenticated Transcript of 2 May 2018 at 8-9.

~~(U)~~³ AE412R at 10-11; Official/Unauthenticated Transcript of 3 May 2018 [T. 5/3/18] at 19382-88.

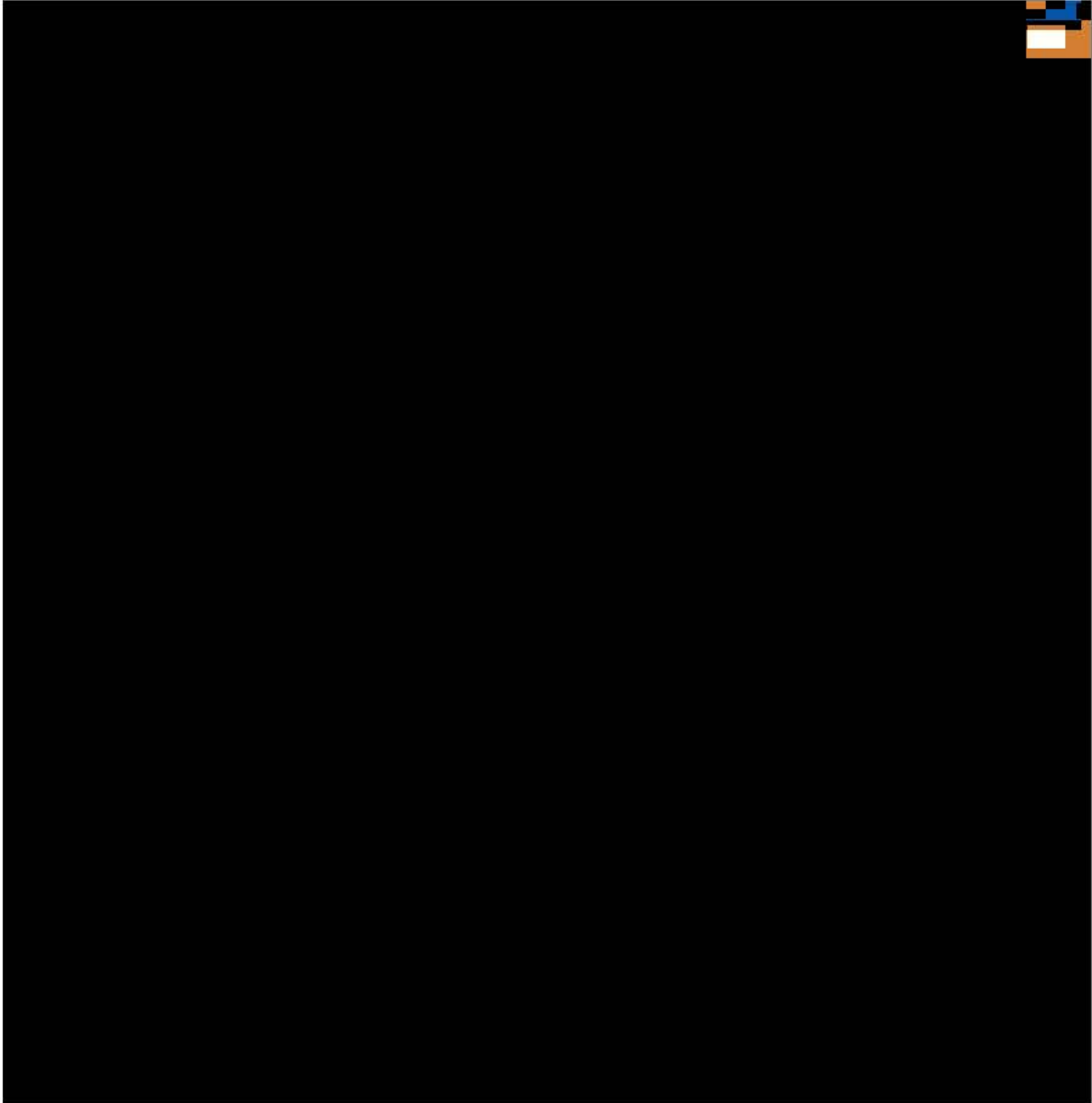
~~(U)~~⁴ T. 5/3/18 at 19386-89.

~~(U)~~⁵ AE478CC at 6.

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h. ~~(S)~~ On 23 July 2018, the parties argued AE561.⁶ At the hearing, the government's position was that it intended to produce discovery responsive to AE538 and AE561 no later than 15 August 2018.⁷



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j. ~~(U)~~ In a closed session on 26 July 2018, the government made further statements about its representation on 25 July.¹⁴ The parties argued AE561¹⁵ as well as AE538.¹⁶ The government made additional representations to the military commission about forthcoming discovery.¹⁷

k. ~~(U)~~ During a break in the hearing on 12 November 2018, the government provided defense counsel with a 105-page set of redacted documents partially responsive to AE561.¹⁸ The parties argued AE561 a second time, but the government declined to state a position in detail in open session.¹⁹

l. ~~(U)~~ Also on 12 November 2018, counsel for the government and counsel for Mr. al Baluchi conferred about the discovery production.²⁰ This conversation is memorialized in DR-272A-AAA.²¹

m. ~~(U)~~ On 13 November 2018, the government represented that it expected to produce additional discovery responsive to AE538 and AE561 after the 12 November 2018 production.²²

~~(U)~~¹⁴ Official/Unauthenticated Transcript of 26 July 2018 at 19817-26.

~~(U)~~¹⁵ *Id.* at 19858-60.

~~(U)~~¹⁶ *Id.* at 19826-58.

~~(U)~~¹⁷ *Id.* at 19860.

~~(U)~~¹⁸ Unofficial/Unauthenticated Transcript of 12 November 2018 at 21040-42. It is not clear to Mr. al Baluchi who redacted the documents or on what authority. The government did not identify any MCRE 505(f) order authorizing redactions or withholdings in connection with the 12 November 2018 discovery production.

~~(U)~~¹⁹ *Id.* at 21077-84.

~~(U)~~²⁰ Unofficial/Unauthenticated Transcript of 13 November 2018 [T. 11/12/18] at 21122.

~~(U)~~²¹ Attachment B.

~~(U)~~²² T. 11/12/18 at 21122-23; *see also id.* at 21126-28 (taking deferral under advisement).

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n. ~~(S)~~ On 14 November 2018, the military commission deferred further argument on AE538.²³ The military commission did not hold closed argument on AE561 in November 2018.

o. ~~(S)~~ On 30 November 2018, Mr. al Baluchi followed up on the 12 November 2018 production and conversation in DR-272A-AAA.²⁴

4. ~~(S)~~ **Law and Argument:**

In DR-272A-AAA, Mr. al Baluchi describes and requests additional discovery referenced in the 12 November 2018 discovery production from the government.

5. ~~(S)~~ **Request for Oral Argument:** Mr. al Baluchi requests oral argument.

6. ~~(S)~~ **Request for Witnesses:** None.

7. ~~(S)~~ **Additional Information:** None.

~~(S)~~²³ Unofficial/Unauthenticated Transcript of 14 November 2018 at 21570-71.

~~(S)~~²⁴ Attachment B.

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8. ~~(U)~~ Attachments:

A. ~~(U)~~ Certificate of Service

B. ~~(U)~~ DR-272A-AAA

~~(U)~~ Very respectfully,

//s//
JAMES G. CONNELL, III
Detailed Learned Counsel

//s//
STERLING R. THOMAS
Lt Col, USAF
Detailed Defense Counsel

//s//
ALKA PRADHAN
Defense Counsel

//s//
BENJAMIN R. FARLEY
Defense Counsel

//s//
MARK E. ANDREU
Capt, USAF
Defense Counsel

Counsel for Mr. al Baluchi

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~~(U)~~ ATTACHMENT A

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~~(U)~~ CERTIFICATE OF SERVICE

~~(U)~~ I certify that on the 3rd day of January, 2019, I electronically filed the foregoing document with the Clerk of Court and served the foregoing on all counsel of record by email.

~~(U)~~ /s/
JAMES G. CONNELL, III
Learned Counsel

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~~(U)~~ ATTACHMENT B



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DEPARTMENT OF DEFENSE
MILITARY COMMISSIONS DEFENSE ORGANIZATION
1620 DEFENSE PENTAGON
WASHINGTON, DC 20301-1620

~~(S)~~ 30 November 2018

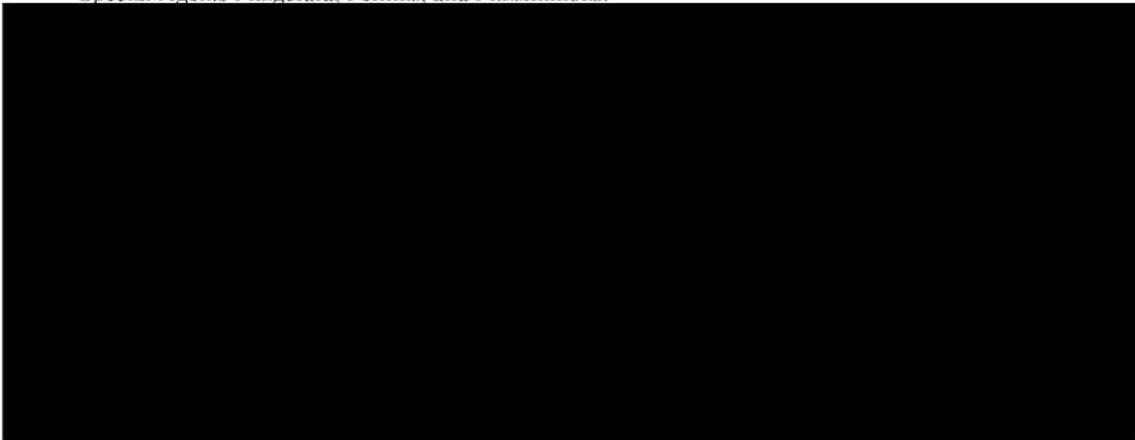
~~(S)~~ MEMORANDUM FOR Trial Counsel

~~(S)~~ FROM: Sterling R. Thomas, Lt Col, USAF, Defense Counsel for Mr. al Baluchi

~~(S)~~ SUBJECT: Non-CIA Involvement in CIA Interrogations

~~(S)~~ I am writing to follow up with specific requests generated by your 12 November 2018 production of FBI input into CIA interrogation of Mr. Mohammad, Mr. bin al Shibh, and Mr. al Hawsawi. This follow-up memorandum is part of the extensive and ongoing dialogue between the parties regarding the discovery necessary to litigate pretrial, trial, and sentencing matters in the pending case.

~~(S)~~ On 12 November 2018, you produced two redacted, undated declarations from Special Agent Aaron Zebley produced in connection with *United States v. Zacarias Moussaoui*, as well as four teletypes. On or about 13 November 2018, Mr. Ryan briefly discussed the discovery production with Mr. Connell as part of the informal discovery process, and explained that the material came from the *Moussaoui* case, and that the prosecution was looking for additional material. Mr. Connell noted that he had only glanced at the production, but that we would need similar material from Special Agents Fitzgerald, Perkins, and Fitzsimmons.



DR-272A-AAA
2018-11-30

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~~(U)~~ Thank you for your attention to this matter. If you have any questions about this request or would like to discuss further, please feel free to contact me.

~~(U)~~ Respectfully submitted,

~~(U)~~ /s/
Sterling R. Thomas
Lt Col, USAF
Counsel for Mr. al Baluchi

DR-272A-AAA
2018-11-30

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