

**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 575G (GOV)

Government Notice
Of Objection To Defense Oral Argument
of Supplementary Case Law

28 January 2019

1. Timeliness

This Notice is timely filed.

2. Notice

On Friday, 25 January 2019, at 1202 hours, Defense counsel for Mr. Ali sent an email to the Prosecution advising it of “additional authorities upon which [Mr. Ali] may rely in forthcoming arguments concerning the AE 575 motion series.” Attachment B. Those authorities consist of 11 additional district, circuit, and U.S. Supreme Court case decisions all decided on or before 2017 and entail approximately 167 pages of case law.

The Prosecution notifies the Commission and parties of its objection to any Defense reference or use during oral argument of the case law cited in Attachment B. In this case, the Defense had over two months to formulate its response to the Prosecution’s motion in AE 575 (GOV). *See* AE 575-4 (RUL)(AAA, KSM, WBA). As a result, to the extent the Defense failed to cite the case law noticed in Attachment B within their response to the motion, all of which pre-date the Defense response, such decision must be construed as strategic in nature.

Notably, on 31 October 2018, Defense counsel for Mr. Ali filed a Motion for Leave to File a Sur-Reply and stated their desire to raise additional case law and argument with the Commission. *See* AE 575-9 (MFL)(AAA). However, the Commission denied the Defense

request on 2 November 2018. *See* AE 575-10 (RUL)(AAA). The Defense should not now be permitted to raise additional case law that this Commission presumably previously denied and of which they have provided the Prosecution with little to no notice. Accordingly, the Prosecution objects to any reference or use during oral argument of the case law cited in Attachment B.

3. Attachments

A. Certificate of Service, dated 28 January 2019

B. Email from Mr. Benjamin Farley to Prosecution, dated 25 January 2019.

Respectfully submitted,

//s//

Clay Trivett
Managing Trial Counsel

Christopher Dykstra
Major, USAF
Assistant Trial Counsel

Mark Martins
Chief Prosecutor
Military Commissions

ATTACHMENT A

ATTACHMENT B

Dykstra, Christopher M Maj USAF OSD OMC OCP (US)

From: Farley, Benjamin R CIV (US)
Sent: Friday, January 25, 2019 12:02
To: [REDACTED] Swann, Robert Lee CIV OSD OMC OCP (USA); Christopher M. Dykstra
[REDACTED] Clay Trivett [REDACTED]
[REDACTED] Cox, Dale J (John) CIV OSD OMC OCP (US); Dale Cox
[REDACTED] Dastoor, Neville F CPT USARMY OSD OMC OCP (US); Dykstra,
Christopher M Maj USAF OSD OMC OCP (US); [REDACTED] Furr, Jeffery C SSgt
USMC OSD OMC OCP (US); Gibbs, Rudolph P Jr CIV OSD OMC OCP (US); Groharing,
Jeffrey D CIV OSD OMC OCP (USA); Fulmines, Heather A CTR OSD OMC OCP (US);
Heather A CTR Fulmines (US) [REDACTED] Hilton, Amy C CIV OSD OMC OCP
(US); Horn, April L MSgt USAF OSD OMC OCP (USA); Jeff Groharing
[REDACTED] JEFFERCF [REDACTED]
Johnson, Clifford D Jr SSgt USMC OSD OMC OCP (USA); Kiser, Antony J SSG USARMY
(US); Maj Benjamin A Mills [REDACTED] Martins, Mark S BG USARMY OSD
OMC OCP (US); Mike Warbel - 9/11 [REDACTED] Mike Warbel
[REDACTED] Mills, Benjamin A Maj USMC OSD OMC OCP (US); Mos Alt
Site; Thravalos, Haridimos V CIV DLSA (US); Neville Dastoor [REDACTED] Nicole
Tate [REDACTED] O'Sullivan, Michael J CIV OSD OMC OCP (US); Tavarez-Patin,
Pascual A CIV OSD OMC OCP (USA); Pascual Tavarez [REDACTED]
[REDACTED] Gross, Ronald C (Ron) LTC USARMY OSD OMC OCP (US); Rudy Gibbs
[REDACTED] Ryan, Ed (USANCW); Ryan, Edward R CIV (US); Tate, Nicole A CIV
(US); Hall, Jackson T Capt USAF OSD OMC OCP (US); Trivett, Clayton G CIV (USA);
Zelnis, Charles R CIV OSD OMC OCP (US)
Cc: OSD NCR OMC List MCDO Team Al Baluchi
Subject: Additional Authorities for Use in Argument concerning AE575 et seq. (UNCLASSIFIED)
Signed By: [REDACTED]

Classification: UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

Dear Trial Counsel:

Be advised of the below citations to additional authorities upon which Mr. al Baluchi may rely in forthcoming arguments concerning the AE575 motion series.

All the best,
Ben

Rothgery v. Gillespie County, 554 U.S. 191 (2008);
Boumediene v. Bush, 553 U.S. 723 (2008);
In re Sealed Case, 146 F.3d 881 (D.C. Cir. 1998);
SEC v. Lavin, 111 F.3d 921 (D.C. Cir. 1997);
Crabb v. KFC Nat'l Management Co., 1992 U.S. App. LEXIS 38268 (6th Cir. 1992);
Morello v. James, 810 F.2d 344 (2d Cir. 1987);
In re Grand Jury Investigation, 2017 U.S. Dist. LEXIS 186420 (D.D.C. 2017);
Moore v. Kingsbrook Jewish Med. Ctr., 2012 U.S. Dist. LEXIS 45738 (E.D.N.Y. 2012);
In re Rail Freight Fuel Surcharge Antitrust Litig., 268 F.R.D. 114 (D.D.C. 2010);
GE v. Johnson, 2006 U.S. Dist. LEXIS 4907 (D.D.C. 2006); and

United States v. Moussaoui, 2002 U.S. Dist. LEXIS 29077 (E.D.V.A. 2002).

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Benjamin R. Farley
Trial Attorney
Team AAA
Military Commissions Defense Organization
[REDACTED]

CLASSIFICATION: UNCLASSIFIED