

UNCLASSIFIED//FOR PUBLIC RELEASE
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 611K (GOV)

Government Response
To Mr. Ali’s Proposed
Order of March

7 January 2019

1. Timeliness

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

2. Law and Argument

The Prosecution provides notice to the Commission and parties of its objection to the Defense’s suggestion in AE 611I (AAA) that the parties re-argue certain motions, some of which were argued during the July 2018 hearing sessions. *See* AE 611I (AAA) at 6. While it does not dispute the Commission’s authority to order re-argument on such issues, the Prosecution does not believe it is in the best interests of judicial economy to do so when the issue has already been extensively briefed and orally argued. This is especially true where the Commission can review the Unofficial/Unauthenticated Transcript of the relevant proceedings and, if he has questions on a particular issue, can order a specified briefing on such issue. *See, e.g.*, AE 523F, Order (ordering further briefing on Commission-raised specified issue). On that basis, the Prosecution objects to the Defense proposal to re-argue the following motions:

AE 432 (AAA) Mr. Ali's Motion to Compel Production of Policies and Procedures for the Collection and Preservation of Evidence from Detainees;¹

AE 490 (MAH) Defense Motion to Dismiss Charges I, VI, VII Due to Lack of Jurisdiction Based on *Ex Post Facto* Violation;²

AE 510 (AAA) Mr. Ali's Motion to Compel Information Relating to Operation INFINITE REACH;³

AE 512 (AAA) Defense Motion to Compel Information Related to Operation INFINITE RESOLVE;⁴

AE 513 (AAA) Mr. Ali's Motion to Compel Information Regarding Covert Action;⁵

AE 514 (AAA) Mr. Ali's Motion to Compel Information regarding Political-Military Plan;⁶

AE 557 (KSM) Defense Motion Regarding Discovery Regarding the Attack on the USS COLE;⁷

AE 581 (AAA) Mr. Ali's Motion to Compel Unredacted Version of MEA-BKG-00003602.⁸

¹ The Prosecution notes that the Defense does not list AE 432 (AAA) as a motion that the parties have previously orally argued. However, on 12 October 2016, Defense counsel for Mr. Ali waived oral argument on the issue and submitted it to the Commission for decision based on the briefs. *See* Unofficial/Unauthenticated Transcript ("Tr.") at 13838 ("MJ [COL POHL]: We have a little more time left. Let's start 432. LDC [MR. CONNELL]: Sir, we submit 432 on the briefs.").

² *See* Tr. at 15752–844.

³ *See* Tr. at 16823–63; 19781–90.

⁴ *See* Tr. at 18496–520; 19790–91.

⁵ *See* Tr. at 20240–79; 19791–801.

⁶ *See* Tr. at 16863–89; 19863–72.

⁷ *See* Tr. at 20070–105.

⁸ *See* Tr. at 19862–72.

Furthermore, the Prosecution asserts that the following motion is ripe for decision by the Commission and no additional oral argument is necessary:

AE 118 (WBA, AAA) Motion to Abate Proceedings Pending Compliance with Protective Order #1.⁹

3. Oral Argument

The Prosecution does not request oral argument. Further, the Prosecution strongly posits that this Commission should dispense with oral argument as the facts and legal contentions are adequately presented in the material now before the Commission and argument would not add to the decisional process. However, if the Military Commission decides to grant oral argument to the Defense, the Prosecution requests an opportunity to respond.

4. Witnesses and Evidence

The Prosecution will not rely on any witnesses or additional evidence in support of this motion.

5. Additional Information

The Prosecution has no additional information.

6. Attachments

A. Certificate of Service, dated 7 January 2019

Respectfully submitted,

//s//

Clay Trivett
Managing Trial Counsel

Christopher Dykstra
Major, USAF
Assistant Trial Counsel

Mark Martins
Chief Prosecutor
Military Commissions

⁹ See Tr. at 14787–816; 14820–25; 14990–91.

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on the 7th day of January 2019, I filed AE 611K (GOV), Government Response To Mr. Ali's Proposed Order of March, with the Office of Military Commissions Trial Judiciary and I served a copy on counsel of record.

//s//

Christopher Dykstra
Major, USAF
Assistant Trial Counsel