

UNCLASSIFIED//FOR PUBLIC RELEASE  
MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY, CUBA

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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 619T (GOV)**

**Government Notice**  
Of Compliance In Accordance With  
AE 619R, Ruling

23 March 2019

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**1. Timeliness**

This Notice is timely filed.

**2. Notice**

On 22 March 2019, this Commission issued AE 619R, Ruling, Defense Motion to Waive Mr. al Hawsawi’s Appearance at the Military Commission Session Scheduled to Begin March 25, 2019. In denying the Defense motion, the Commission stated, “[t]he Government has not explained why it marked its response and the [Senior Medical Officer’s (“SMO”)] declaration in a manner that prohibits Counsel for Mr. Hawsawi from showing the documents to Mr. Hawsawi.” AE 619R at 4. It then ordered that “[n]ot later than 23 March 2019, the Government will mark its response . . . to include the SMO declaration, and this ruling in a manner by which Counsel for Mr. Hawsawi can show the documents to Mr. Hawsawi . . .” *Id.* at 4.

The Prosecution hereby notifies the Commission that all required documents were marked releasable to Mr. Hawsawi and provided to his defense counsel in advance of the Commission’s order on 21 March 2019. *See* Attach. B. Further, the Prosecution provides the Commission with two emails to Defense counsel that detail Prosecution efforts to resolve not only the specific issue raised in AE 619Q (MAH), but also any potential systemic issue regarding the Privilege Review Team’s refusal to permit For Official Use Only (“FOUO”) documents to go

to the Accused without a “RELEASABLE TO” marking that may have been affecting all five Defense teams. To the extent such efforts have not resolved these issues, the Prosecution does not object to the Military Judge ordering the Privilege Review Team to permit FOUO pleadings to be provided to the Accused with any “RELEASABLE TO” marking (unless specifically marked as “Not Releasable to Detainee or Public”) as necessary. *See Attach. B at 2.*

**3. Attachments**

- A. Certificate of Service, dated 23 March 2019
- B. Email from Managing Trial Counsel to Defense Counsel, dated 21–22 March 2019

Respectfully submitted,

\_\_\_\_\_  
//s//

Clay Trivett  
Managing Trial Counsel

Christopher Dykstra  
Major, USAF  
Assistant Trial Counsel

Mark Martins  
Chief Prosecutor  
Military Commissions

# ATTACHMENT A

**CERTIFICATE OF SERVICE**

I certify that on the 23rd day of March 2019, I filed AE 619T (GOV), Government Notice Of Compliance In Accordance With AE 619R, Ruling, 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

# ATTACHMENT B

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From: [CLAYTOGT](#)

To: [REDACTED] [Furny, David D](#) LTCDR USN DLSA (USA); [Gleason, Sean M](#) CIV DLSA (USA); [REDACTED] LTCDR USN NAVIOPCOM MEDINA TX (USA); [REDACTED] OSD NCR OMC List MCDO Team Hawsawi; [REDACTED] MAJ USARMY (USA); [Wilkinson, Joseph D II](#) MAJ USARMY OSD OMC (USA); [Williams, Jennifer N](#) LTC USARMY OSD OMC (USA); [Wichner, Alaina M](#) CIV OSD OMC (USA); [REDACTED] CIV (USA); [REDACTED] CIV (USA); [REDACTED] CIV (USA); [Harrington, James P](#) CIV (USA); [Balouzveh, John M](#) CPT USARMY HQDA TJAGLCS (USA); [Danielson, Mishael A](#) LT USN (USA); [REDACTED] LT USN NAVY JAG WASH DC (USA); [REDACTED] SSG USARMY OSD OMC (US); [REDACTED] CIV (USA); [REDACTED] CTR DLSA (US); [REDACTED] Maj USAF (USA); [Feeler, Wyatt A](#) CIV (US); [Smith, Adam J](#) TSgt USAF (USA); [Bormann, Cheryl T](#) CIV (USA); [Perry, Edwin A](#) CIV (USA); [REDACTED] F CTR (US); [Seeger, Matthew H](#) MAJ USARMY OSD OMC (USA); [Garber, Michael J](#) CIV (USA); OSD NCR OMC List MCDO Team Bin Attash; [REDACTED] CIV (USA); [REDACTED] (USA); [REDACTED] CIV (USA); [REDACTED] CTR (USA); [Montross, William](#) CIV (US); [REDACTED] TSgt USAF OSD OMC (USA); [Andre](#) SAFA (USA); [REDACTED] PO1 USN CNO (US); [Connell, James G III](#) CIV (USA); [Farley, Benjamin R](#) CIV (US); [REDACTED] CIV DLSA (USA); OSD NCR OMC List MCDO Team Al Baluchi; [REDACTED] SFC USARMY OSD OMC (US); [Pradhan, Alka](#) CIV (US); [REDACTED] IV (USA); [Thomas, Sterling R](#) LT Col USAF (USA); [REDACTED] A CTR (USA); [REDACTED] CDR USN (USA); [Nevin, David Z](#) CIV (USA); [REDACTED] CIV DLSA (USA); [REDACTED] TSgt USAF AFDW (USA); [REDACTED] USARMY; [REDACTED] CTR (US); [REDACTED] CIV OSD OMC (USA); [REDACTED] A); [REDACTED] USAF OSD OMC (USA); [Poteet, Derek A](#) LtCol USM; [REDACTED] M; [REDACTED] NCR OMC List MCDO Team Mohammad; [Radostitz, Rita J](#) CIV (US); [REDACTED] CIV (USA); OSD NCR OMC List MCDO Team RBAS

Cc: [Swann, Robert Lee](#) CIV OSD OMC OCP (USA); [Christopher M. Dykstra](#); [CLAYTOGT](#); [CLIFFODJ](#); [DALEJC](#); [Dykstra, Christopher M](#) Maj USAF OSD OMC OCP (USA); [Furr, Jeffery C](#) SSgt USMC OSD OMC OCP (US); [Gibbs, Rudolph P Jr](#) CIV OSD OMC OCP (USA); [REDACTED] MSgt USAF OSD OMC; [REDACTED] ing, [Jeffrey D](#) CIV OSD OMC OCP (USA); [JEFFRCF](#); [JEFFRELDG](#); [jeffrey groharin](#); [REDACTED] Jr SSgt USMC OSD OMC OCP (USA); [REDACTED] SSG USARMY (US); [NICOLEAT](#); [Tavarez-Patin, Pascual A](#) CIV OSD OMC OCP (USA); [ROBERTLS](#); [RUDOLFFG](#); [Tate, Nicole A](#) CIV (US); [BENJAMM3](#); [Trivett, Clayton G](#) CIV (USA); [Mar ins, Mark S](#) BG USARMY OSD OMC OCP (US)

Subject: [Non-DoD Source] FW: AE 619 Pleadings Marked Releasable to the Accused

Date: Friday, March 22, 2019 7:19:13 PM

Attachments: [AE 018DDDDD Order dtd 1 Feb 17.pdf](#)  
[AE 619Q\(MAH\) - Rep to AE 619N\(GOV\) - REL TO 10011.pdf](#)  
[AE 619N \(GOV\) - Gov Resp to AE 619D \(MAH\) - REL TO 10011.pdf](#)  
[AE 619R - RULING dtd 22 Mar 19 \(FOUO\)\(REL TO 10011, 10013, 10014, 10018, 10024\).pdf](#)  
[AE 619Q\(MAH\) - Rep to AE 619N\(GOV\) - REL TO ALL.pdf](#)  
[AE 619N \(GOV\) - Gov Resp to AE 619D \(MAH\) - REL TO ALL.pdf](#)

Defense Counsel,

Yesterday the Prosecution sent Mr. Hawsawi's Defense team the below email and provided AE 619N (GOV) and AE 619 Q (MAH) as REL TO 10011 (see attached). I am now sending this email to all Defense counsel, with AE 619N (GOV), AE 619 Q (MAH), and AE 619R (Ruling) marked "Releasable To" all five Accused.

Following the litigation to amend the Written Privileged Communications Order and the subsequent Order in AE 018DDDDD, the parties were all in agreement that pleadings need not be marked by the Prosecution as releasable to Detainees, even if marked FOUO. To the extent that any FOUO materials would not be releasable to the Accused, the Prosecution would specifically mark those documents as such, by marking it "Not Releasable to the Detainees or Public." As far as I was aware, the Privilege Review Team (PRT) was letting those materials into meetings and legal mail to the Accused since February 2017.

It is now my understanding that at some point recently the PRT was no longer accepting pleadings marked as FOUO unless they had a "REL TO" stamp on it. As set forth below, shortly after receiving Mr. Hawsawi's request for markings of pleadings to go to the Accused, I requested that the PRT be

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contacted through DoD channels (we do not communicate directly with the PRT) to make clear that, following the February 2017 order in AE 018DDDDDD, "REL TO" markings are no longer required for pleadings. I had hoped to have had that issue resolved by Wednesday 20 March, but that did not occur. It is my understanding now that the PRT has been apprised of the Prosecution's position regarding the "REL TO" issue, but I am not certain if the PRT has yet agreed to permit such FOUO filings without markings. Feel free to use this email if necessary this weekend as the United States position on the issue for FOUO filings other than the ones I am now marking and providing you until this issue is resolved.

As the Military Judge supervises the PRT per the Written Privileged Communications Order, the Prosecution would also not object to the Military Judge ordering the PRT to permit FOUO pleadings to be provided to the Accused with any "REL TO" marking (unless specifically marked as NOT REL TO Detainees or Public) as necessary.

Regards,

Clay Trivett

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**From:** CLAYTOGT  
**Sent:** Thursday, March 21, 2019 6:45 PM  
**To:** Lachelier, Suzanne M CIV DIA (USA) <suzanne.m.lachelier.ci [REDACTED] Ruiz, Walter B Jr CDR USN (USA) <walter.b. [REDACTED] Gleason, Sean M CIV DLSA (USA) <sean.m.gleason8.ci [REDACTED]  
**Cc:** 'Swann, Robert Lee CIV OSD OMC OCP (USA)' <robert.l.swann4.civ [REDACTED] ALEJC <dalej [REDACTED] Clayton.g.trivett.civ [REDACTED]  
**Subject:** AE 619 Pleadings Marked Releasable to the Accused

Team Hawsawi,

Shortly after receiving your request for markings of pleadings to go to the Accused, we requested that the PRT be contacted (we do not communicate directly with the PRT) to make clear that, following the February 2017 order in AE 018DDDDDD, "REL TO" markings are no longer required for pleadings. I had hoped to have had that issue resolved by yesterday, but that did not occur.

In light of your filing today in AE 619Q (MAH), and your stated desire to share the 619 pleadings with your client, we are marking these items in this instance only in order to facilitate the meeting and discussion of the issue with your client, and hope to have the overall FOUO "markings" issue resolved with the PRT shortly.

Also, I would note that Ms. Lachelier once again sent her request to my DoD account, and not this email account, which I rarely check unless in Guantanamo Bay, and which delayed my taking action

on this issue.

Regards,

Clay Trivett