

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

UNITED STATES OF AMERICA v. ABD AL HADI AL IRAQI	AE 080 Defense Motion To Compel Discovery Of Seventeenth Supplemental Request for Discovery dated 30 January 2017 3 April 2017
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1. Timeliness.

This motion is filed timely pursuant to Military Commissions Trial Judiciary Rule of Court 3.7(c).

2. Relief Sought.

The Defense respectfully request the military judge compel production of Defense Seventeenth Supplemental Discovery Request dated 30 January 2017.¹

3. Overview.

Mr. al-Tamir files this motion to compel discovery contained within the Defense Seventeenth Supplemental Request for discovery dated 30 January 2017.² The Defense is entitled to the requested materials, as they are favorable to the accused³ and “material to the preparation of his defense.”⁴

The Seventeenth Supplement requested that the Government respond by 1 March 2017, which allowed a period of one month to produce the requested information or object. The Defense received no response until 31 March 2017, after this motion was drafted for filing and

¹ Attachment B, Defense Seventeenth Supplemental Request for Discovery dated 30 January 2017.

² *Id.*

³ *Brady v. Maryland*, 373 U.S. 83 (1963).

⁴ R.M.C. 701(c)(1).

the Defense had sent an email requesting the Government's conferencing position. The Government's email to the Defense states that "[t]he Government is in the process of responding to the Defense's Seventeenth Supplemental Discovery Request; therefore, the Government objects to the proposed motion."⁵ Because of the belatedness of the Government response and because it is unknown whether the Government will produce documents or object, the Defense is filing this motion, recognizing that a substantive response by the Government may cause the Defense to modify its request for relief by way of supplement or at oral argument.

4. Burden and Standard of Proof.

As the moving party, the Defense has the burden of persuasion, by a preponderance of the evidence.⁶

5. Facts.

a. On 3 February 2014, the Government preferred charges of denying quarter; attacking protected property; using treachery or perfidy; attempted use of treachery and perfidy; and conspiracy against Mr. al-Tamir.⁷

b. On 14 June 2014, charges against Mr. al-Tamir were referred non-capital to this Military Commission.⁸

c. Mr. al-Tamir is accused of committing criminal activity that spans across Afghanistan, Pakistan, Iraq, Turkey and "elsewhere" that took place for over decade.⁹

d. On 30 January 2017, the Defense served its Seventeenth Supplemental Request for Discovery on the Government.

⁵ Attachment C, Email from Trial Counsel to Defense Counsel dated 31 March 2017.

⁶ R.M.C. 905(c)(1)-(2).

⁷ Charge Sheet.

⁸ *Id.*

⁹ From on or about 1996 through on or about 1 November 2006.

e. Defense requested a response to its Seventeenth Supplemental Request for Discovery requested a response “no later than 1 March 2017, to allow for sufficient time to litigate a motion to compel at the next hearing” if necessary. This allowed the Government a period of one month to respond to the request.

f. As of 30 March 2017, the Government had not responded to the Seventeenth Supplement. On that date, Defense counsel emailed the Government requesting its position with respect to the instant Motion to Compel.

g. On 31 March 2017, the Government responded to the request for position email, stating that “The Government is in the process of responding to the Defense's Seventeenth Supplemental Discovery Request; therefore, the Government objects to the proposed motion.”¹⁰

6. Law and Argument.

Under the Rules for Military Commissions, a defendant is entitled to discover all documents and other tangible items that are “material to preparation of the defense,”¹¹ or that “reasonably tend[] to . . . [n]egate the guilt of the accused of an offense charged; . . . [r]educe the degree of guilt of the accused with respect to an offense charged; or . . . reduce the punishment”¹² imposed after conviction. Under the Due Process Clause of the Fifth Amendment, an accused is entitled to all “evidence favorable to an accused . . . where the evidence is material either to guilt or punishment.”¹³

A. “Materiality to Preparation of the defense” is a broad standard that includes information that would be inadmissible at trial.

The scope of “materiality” used in Rule 701 must be construed in pari materia with the discovery provisions of the military justice and federal criminal justice systems, Rule for Courts-

¹⁰ Attachment C, Email from Trial Counsel to Defense Counsel dated 31 March 2017.

¹¹ R.M.C. 701(c)(1) and(2).

¹² R.M.C. 701(e)(1).

¹³ Brady, 373 U.S. at 87.

Martial 701 and Federal Rule of Criminal Procedures (“Fed. R. Crim. P.”) 16. The Military Commissions Act provides that although Uniform Code of Military Justice (“UCMJ”) rules are not binding, they are “instructive.”¹⁴ The Act also provides that, “the opportunity to obtain witnesses and evidence shall be comparable to the opportunity available to a criminal defendant in a court of the United States under Article III of the Constitution.”¹⁵ Neither of these provisions was included in the 2006 Military Commissions Act,¹⁶ and there is no doubt that Congress intended to expand them to a defendant’s discovery rights.¹⁷ These principles have special force here, because the language of Rule 701(c)(1) is identical or virtually identical to the parallel provision of the Rules for Courts-Martial (“R.C.M.”) and Fed. R. Crim. P. 16. Like R.M.C. 701(c)(1), R.M.C. 701(a)(2)(A) provides for discovery, *inter alia*, of documentary and tangible information that is “material to the preparation of the defense.” Federal Rule of Criminal Procedure 16(a)(1)(E) provides for discovery of documents and tangible items that are “material to the preparing of the defense.”

For discovery purposes demonstrating materiality is normally not a heavy burden.¹⁸ Under Rule 16, information is material if it “bears some abstract logical relationship to the issues

¹⁴ 10 U.S.C. § 948b(c).

¹⁵ 10 U.S.C. § 949j(a)(1).

¹⁶ P.L. 109-366, Oct. 17, 2006, 120 Stat. 2615 (“2006 MCA”). *Compare* 2006 MCA § 949(c) (“The judicial construction and application of the [the UCMJ] are not binding on military commissions established under this chapter.”) *with* 2009 MCA (10 U.S.C.) § 948b(c) (“The judicial construction and application of Chapter 47 of this title, while instructive, is therefore no of its own force binding on military commissions established under this chapter.”) ; *compare*, 2006 MCA, § 949j(a) (no mention of Article III courts) *with* 2009 MCA (10 U.S.C.) § 949j(a)(1) (adding “The opportunity to obtain witnesses and evidence shall be comparable to the opportunity available to a criminal defendant in a court of the United States under article III of the Constitution.”).

¹⁷ See, e.g., comments of Senate Armed Services Committee Chair Carl Levin:

[The amendments] would eliminate the unique procedures and requirements [under the 2006 MCA] which have hampered the ability of defense teams to obtain both information and have led to much litigation. We would substitute the more established procedures of the Uniform Code of Military Justice (UCMJ). Opening Statement of Sen. Carl Levin, at 2, Senate Armed Services Committee Hearings On Legal Issues Regarding Military Commissions And the Trial of Detainees for Violation of the Law of War, July 7, 2009.

¹⁸ *United States v. Lloyd*, 992 F.2d 348, 351 (D.C. Cir. 1993) (quoting *United States v. George*, 786 F. Supp. 56, 58 (D.D.C. 1992)); see also *United States v. Stone*, 40 M.J. 420, 422 n.1 (C.M.A. 1994) (RCM 701 “described a similar right to discovery provided in Fed. R. Crim. P. 16 . . . [The RCM 701] ‘materiality standard normally ‘is not a heavy burden,’ . . . ; rather, evidence is material as long as there is a strong indication that it will ‘play an important role in

in the case.”¹⁹ For information to be discoverable all that is required is that there is “some indication that the pretrial disclosure of the disputed evidence would [enable] the defendant significantly to alter the quantum of proof in his favor.”²⁰ In the military justice context, R.C.M. 701 “is specifically intended to provide ‘for broader discovery than is required in Federal practice.’”²¹

Accordingly, information need not be admissible in court to be discoverable. The federal discovery rules are intended to provide a defendant with “the widest possible opportunity to inspect and receive such materials in the possession of the government as may aid him in presenting his side of the case.”²² “[A]n accused's right to discovery is not limited to evidence that would be known to be admissible at trial. It includes materials that would assist the defense in formulating a defense strategy.”²³ Information is therefore material for discovery purposes “as long as there is a strong indication that it will play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal.”²⁴

Nor is material evidence limited to exculpatory evidence.²⁵ Indeed, it includes information that is unfavorable, as “a defendant in possession of such evidence may alter the quantum of proof in his favor in several ways: by preparing a strategy to confront the damaging

uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal”; quoting *Lloyd*, 992 F.2d at 351 (internal cites omitted)); *United States v. NYNEX Corp.*, 781 F. Supp. 19, 25 n.8 (D.D.C. 1992)).

¹⁹ *Lloyd*, 992 F.2d at 351 (quoting *United States v. Caicedo-Llanos*, 960 F.2d 158, 164 n. 4 (D.C.Cir.1992)).

²⁰ *Id.*

²¹ *United States v. Adens*, 56 M.J. 724, 733 (Army Ct. Crim. App. 2002) (citation omitted).

²² *United States v. Poindexter*, 727 F. Supp. 1470, 1473 (D.D.C.1989).

²³ *United States v. Webb*, 66 M.J. 89, 92 (C.A.A.F. 2008); see also *United States v. Roberts*, 59 M.J. 323, 325 (C.A.A.F. 2004) (discovery practice is not focused solely upon evidence known to be admissible at trial).

²⁴ *United States v. Lloyd*, 992 F.2d 348, 351 (D.C. Cir. 1993) (internal quotations omitted); see, also *United States v. Caro*, 597 F.3d 609, 621 (4th Cir. 2010) (citing *Lloyd*); see also *Stone*, 40 M.J. at 42\2 n.1 (same); *United States v. Marshall*, 132 F.3d 63, 68 (D.C. Cir. 1998) (same); *United States v. Singhal*, -- F. Supp. 2d --, 2012 WL 2851861 at *16 (D.D.C. 2012).

²⁵ *Marshall*, 132 F.3d 63 at 67; *United States v. Libby*, 429 F. Supp. 2d 1, 7 (D.D.C. 2006).

evidence at trial; by conducting an investigation to attempt to discredit that evidence; or by not presenting a defense which is undercut by such evidence.”²⁶

B. The government is independently obligated to turn over all information that is “favorable to the defense” for both findings and sentencing.

Apart from its Rule 701(c) obligations, the government is obligated to turn over all information that may be exculpatory to the defendant at both findings and sentencing phases under the Military Commissions Act,²⁷ Rule 701,²⁸ and the Constitution.²⁹

The standards for disclosure in Rule 701(e) are, if anything, lower than the materiality requirement of Rule 701(c). A defendant is entitled to discover all documents and other tangible items that “reasonably tend[] to . . . [n]egate the guilt of the accused of an offense charged; . . . [r]educe the degree of guilt of the accused with respect to an offense charged; or . . . reduce the punishment” imposed after conviction.³⁰ Under Rule 701(e)(2), he is entitled to information that “reasonably tends to impeach the credibility of a witness whom the government intends to call at trial.” And under Rule 701(e)(3), he is entitled to “the existence of evidence that is not subject to paragraph (1) or paragraph (2) but that reasonably may be viewed as mitigation evidence at sentencing.” Thus, with respect to evidence of guilt, relative culpability and impeachment evidence, evidence that simply “reasonably tends” to exculpate the defendant must be disclosed. The standard for disclosure of mitigating evidence under subsection (e)(3) is even lower, because it requires disclosure of evidence that “may reasonably be viewed” as mitigating – that is, that must be evaluated from the subjective perspective of a reasonable person.

²⁶ *Marshall*, 132 F.3d at 68.

²⁷ 10 U.S.C. § 949j(b).

²⁸ R.M.C. 701(e).

²⁹ *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

³⁰ R.M.C. 701(e)(1)(A), (B) and (C).

Under the Due Process Clause of the Fifth Amendment, a defendant is entitled to all “evidence favorable to an accused . . . where the evidence is material either to guilt or to punishment.”³¹ The rule includes impeachment evidence within its scope.³² Where disclosure required by the Due Process Clause is broader than that required by Rule 701, it is the Due Process Clause standard that controls.³³ Moreover, “courts [under of the jurisdiction of the D.C. Circuit] look with disfavor on narrow readings by prosecutors of the government's obligations under Brady.”³⁴

Before and during trial, the government’s Brady obligation encompasses all evidence that is potentially favorable to the accused. To be clear, Brady states in addition to the favorability standard that the evidence must also be “material to either guilt or punishment.”³⁵ This language is misleading, however, because the materiality requirement applies **only** when it is discovered after trial and conviction that the Government has withheld favorable evidence. In the post-conviction context, it is sometimes clear that the Government’s failure to abide by its obligation could not have affected the verdict. The post-conviction Brady analysis recognizes this reality by imposing the additional “materiality” requirement. The meaning of “materiality” for Brady purposes is therefore different than its meaning under Rule 701. Undisclosed information is “material” for Brady purposes only “if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.”³⁶ This standard makes clear that Brady materiality comes into question only after there is a “result of the proceeding” to analyze.

³¹ *Brady*, 373 U.S. at 87.

³² *Giglio v. United States*, 405 U.S. 150, 154 (1972).

³³ *United States v. Edwards*, 191 F. Supp. 2d 88, 89 (D.D.C. 2002) (“Whatever may be required by [the Federal Rules of Criminal Procedure and Rules of Evidence] is always trumped by *Brady*”; citing *United States v. Paxson*, 861 F.2d 730, 737 (D.C. Cir. 1988)).

³⁴ *Edwards*, 191 F. Supp. 2d at 90.

³⁵ *Brady*, 373 U.S. at 87.

³⁶ *United States v. Bagley*, 473 U.S. 667, 682 (1985).

Accordingly, Brady materiality is irrelevant in the current posture of these proceedings. As one court has explained, “The prosecutor cannot be permitted to look at the case pretrial through the end of the telescope an appellate court would use post trial.”³⁷ As a result, the sole criterion for disclosure at the pre-trial and trial phases is whether the evidence is “potentially exculpatory or otherwise favorable . . . without regard to how the withholding of such evidence might be viewed-with the benefit of hindsight-as affecting the outcome of the trial.”³⁸ That is, “[t]he only question before (and even during) trial is whether the evidence at issue may be ‘favorable to the accused’; if so, it must be disclosed without regard to whether the failure to disclose it likely would affect the outcome of the upcoming trial.”³⁹ Against the background of these principles it is clear, that the Government is obligated to turn over the discovery sought by the instant request.

C. All requested information is discoverable.

All documents and information requested by the Defense are material to the preparation of a Defense and are favorable to the Defense in both findings and sentencing. The Government has charged Mr. al-Tamir with denying quarter; attacking protected property; using treachery or perfidy (three specifications); attempted use of treachery or perfidy and conspiring to commit various underlying offenses. The Government alleges that the conduct described in sixty-three

³⁷ *United States v. Safavian*, 233 F.R.D. 12, 16 (D.D.C. 2005). The court went on to explain that

The problem with [employing the materiality standard before and during trial is that it permits prosecutors to withhold admittedly favorable evidence whenever the prosecutors, in their wisdom, conclude that it would not make a difference to the outcome of the trial. Most prosecutors are neither neutral (nor should they be) nor prescient, and any such judgment necessarily is speculative on so many matters that simply are unknown and unknowable before trial begins: which government witnesses will be available for trial, how they will testify and be evaluated by the jury, which objections to testimony and evidence the trial judge will sustain and which he will overrule, what the nature of the defense will be, what witnesses and evidence will support that defense, what instructions the Court ultimately will give, what questions the jury may pose during deliberations (and how they may be answered), and whether the jury finds guilt on all counts or only on some (and which ones). *Id.*

³⁸ *Id.*

³⁹ *Id.*

common allegations and incorporated into the charge sheet support Mr. al-Tamir's guilt as either a principal or a co-conspirator.⁴⁰

The Government has charged Mr. al-Tamir with numerous and varied offenses arising out of his alleged role as a senior member of the al Qaeda network. At the time of the alleged offenses, Mr. al-Tamir's alleged leadership took on many forms, including but, not limited to, commanding an al Qaeda terrorist training camp in Afghanistan; commanding an al Qaeda guest house in Afghanistan; serving as a senior advisory council in which he allegedly assisted in setting terrorist policies and objectives that included killing Americans and other civilians; serving as a key al Qaeda liaison to the Taliban; commanding an al Qaeda insurgency in Afghanistan and Pakistan and aiding the al Qaeda insurgency in Iraq.⁴¹ As it relates to this supplemental discovery request, Mr. al-Tamir is charged with attacking protected property on or about 29 September 2003 at or near Shkin, Afghanistan. The Government alleges that Mr. al-Tamir intentionally attacked a protected military medical helicopter by firing at the helicopter while it attempted to evacuate a U.S. military member from the battlefield. Mr. al-Tamir is charged as a principal, a co-conspirator and a participant.⁴²

To prove that Mr. al-Tamir intentionally attacked a protected military helicopter, the Government asserts that Mr. al-Tamir was at or near Shkin, Afghanistan in early 2003 as evidenced by a piece of paper that the Government has labeled the "Shkin Meeting Letter." The Government found the "Shkin Meeting Letter" near Shkin, Afghanistan on 17 May 2003 at a Sensitive Site Exploitation location. The Government discovered the Shkin meeting letter four months before the 29 September 2003 attack. The "Shkin Meeting Letter" is written in Pashtu⁴³

⁴⁰ Charge Sheet.

⁴¹ AE 043 and AE035.

⁴² *Id.* Common articles 36 through 38 are incorporated into the sole Specification of the Charge.

⁴³ Pashtu is a language associated with the Afghanistan/Pakistan region.

and has multiple authors, none of which have been identified as Mr. al-Tamir. What the “Shkin Meeting Letter” does not contain are the words “Shkin Meeting Letter;” a date; an agenda; preparation or planning of attacks or the attacks of 29 September 2003.

Evidence related to the “Shkin Meeting Letter” to include where it was found; who found it; how it was catalogued; the SSE of 17 May 2003; information linking Shkin, Afghanistan as a an al Qaeda operational center and information that supports Mr. al-Tamir’s alleged involvement for the attack on U.S. forces that took place on 29 September 2003 is discoverable under both Brady and Rule 701.⁴⁴ The Defense Seventeenth Supplemental Request for Discovery is specifically focused on the attack that took place on 29 September 2003, the discovery of the “Shkin Meeting Letter,” Mr. al-Tamir’s alleged involvement; the involvement of alleged co-conspirators⁴⁵ and the al Qaeda and Taliban command structure to include any warlords that the Government has identified as being co-conspirators or participants.⁴⁶ The information requested by the Defense not only bears some logical relationship to the issues in the case it also aids the Defense in preparing a strategy to confront the damaging evidence at trial; aids the Defense in conducting an investigation to attempt to discredit the evidence; or may aid the Defense in determining not to present a defense.

The Government asserts that the “Shkin Meeting Letter” contains operational security and trade craft elements of the Taliban and al Qaeda leadership to include code words and separating the names of attendees on one page from the meeting location on a separate page.⁴⁷ If the Governments assertion is true, the Defense cannot adequately prepare, investigate or defend the Governments assertions surrounding the “Shkin Meeting Letter” unless the information that

⁴⁴ See United States v. Naegle, 468 F.Supp.2d 150, 154 (D.D.C. 2007) (holding that policy evidence is discoverable).

⁴⁵ AE 035 and AE 043.

⁴⁶ Id.

⁴⁷ AE 035 and AE 043.

the Government intends to use to show the operational security and trade craft elements are provided to the Defense. The Government asserts that since the "Shkin Meeting Letter" was found at or near Shkin, Afghanistan in May of 2003; because the "Letter" represents a meeting that took place sometime; and the name "Abd-al-Hadi-Al-Iraqi" appears on the piece of paper it is more probable than not that he is responsible for the attacks that took place four months later. The operational security and trade craft elements of the Taliban and al Qaeda leadership to include code words and separating the names of attendees on one page from the meeting location on a separate page information goes directly to the heart of the Governments case and therefore it is discoverable. Discoverable evidence includes information that would allow Mr. al-Tamir to prepare a strategy to confront the damaging evidence at trial; to investigate to attempt to discredit evidence; or determine not to present a defense.

The information requested by Defense in its Seventeenth Supplemental Request for Discovery is material to defense investigation, preparation and strategy, and will likely lead to significant impeachment material. The information request by the Defense not only bears some logical relationship to the issues in the case it aids the Defense in preparing a strategy to confront the damaging evidence at trial and to investigate to attempt to discredit the evidence. There can be no serious debate as to the materiality and discoverability of such items, given their alleged direct link to Mr. al-Tamir in connection to the charges pending before this Commission.

7. Conclusion.

Under the Federal Rules for information to be discoverable all that is required is that there must be some indication that the pretrial disclosure of the disputed evidence would [enable] the defendant significantly to alter the quantum of proof in his favor. In the military justice context, discoverable evidence is even broader. Each request for information contained within

Defense Seventeenth Supplemental Request for Discovery relates directly to Mr. al-Tamir's charges; the requests address electronic and physical evidence are specifically attributable to Mr. al-Tamir. The Defense respectfully requests this Commission grant the Defense Motion to Compel Discovery of its Seventeenth Supplemental Request for Discovery.

8. Oral Argument.

The Defense requests oral argument.

9. Witness and Evidence.

The Defense does not have any evidence to present nor is the Defense requesting witnesses to testify on this matter.

10. Conference with Opposing Counsel.

The Defense has conferenced with the Prosecution and the Prosecution objects to the Defense's motion.

11. Additional Information.

The Defense does not have any additional information to present.

12. Attachments:

- A. Certificate of Service, dated 3 April 2017.
- B. Seventeenth Supplemental Request for Discovery dated 30 January 2017.
- C. Email from Trial Counsel to Defense Counsel dated 31 March 2017.

Respectfully Submitted,

//s//
BRENT RUSHFORTH
Pro Bono Counsel

//s//
JEFFREY A. FISCHER
CAPT, JAGC, USN
Detailed Defense Counsel

//s//
AIMEE COOPER
CDR, JAGC, USN
Detailed Defense Counsel

//s//
ADAM THURSCWELL
Assistant Defense Counsel

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on the 3rd day of April 2017, I filed **AE 080, Defense Motion** to Compel Discovery of Seventeenth Supplemental Request for Discovery dated 30 January 2017, was filed with the Office of Military Commissions Trial Judiciary and served on Government counsel of record.

//s//

AIMEE M. COOPER
CDR, JAGC, USN
Detailed Defense Counsel

ATTACHMENT B



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

30 January 2017

From: Defense Counsel ICO *United States v. Abd Al Hadi Al-Iraqi*

To: Trial Counsel

Ref: (a) Military Commissions Act, 10 U.S.C. §949j(a);
(b) Rules for Military Commissions;
(c) Military Commissions Rules of Evidence;
(d) U.S. Const., Amend. 5;
(e) U.S. Const., Amend. 6;
(f) U.S. Const., Amend. 8;
(g) *Strickland v. Washington*, 466 U.S. 668 (1984); and
(h) Common Articles 3 and 4 to the Geneva Conventions (1) Art. 75, Additional Protocol I, to the Geneva Conventions.

SUBJ: Seventeenth Supplemental Request for Discovery ICO *United States v. Abd Al Hadi Al-Iraqi*

1. In accordance with References (a) through (h), the Accused, Nashwan al-Tamir (ISN 10026), through Defense counsel, respectfully requests that the Government produce and permit the Defense to inspect, copy, or photograph each of the items listed in the sections below. This request includes a demand that the Government preserves all information that may fall within the scope of discovery sought below but that either the Government does not intend to produce or that the Government believes is not discoverable.
2. The Defense further requests that the Government ***notify the Defense in writing*** which specific items or requested information or evidence ***will not be provided*** and the reason for denial of discovery.
3. The requested evidence is material to the preparation of the defense and/or is exculpatory. Defense counsel cannot properly provide effective assistance of counsel, nor prepare for trial, without production of the documents and items requested.
4. The requested information is known, or should, with the exercise of due diligence, be known to the United States or its agents.
5. If the Government ***does not intend to provide*** Defense with copies of documents or tangible objects, the Defense requests a ***reasonable opportunity to inspect***, photograph and photocopy such documents or objects.

6. This discovery request is continuing, and shall apply to any additional charges or specifications, in addition to those referred after the date of this discovery request is served upon the Government. The Defense reserves the right to supplement this request for discovery at any time, as new information becomes available.
7. The Defense requests a response to this discovery request NO LATER THAN 1 MARCH 2017, to allow sufficient time to litigate a motion to compel at the next hearing, after that date, should there be a need to do so.
8. All relevant time periods, for purpose of this discovery request are 1 January 1996 through 1 November 2006.
9. All references to Mr. al-Tamir includes the “also known as” names to include but not limited to: Nashwan ‘Abd al-Razzaq ‘Abd al-Baqi (“Abd al Hadi”) and all aliases of Abd al Hadi al-Iraqi listed in Appendix A of the charge sheet referred on 2 June 2014 and attached to this request for clarity.
10. The Defense requests the production of the following:
 - a. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency regarding the **Shkin Meeting Letter**;
 - b. Any and all custody logs, documents, memorandum, correspondence, cables, email, reports or notes to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, the Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that discuss, describe or identifies the exact location the Shkin Meeting Letter was found on or about 17 May 2003;
 - c. A full un-redacted roster, list, spreadsheet to include the last known address, phone number and e-mail address of the Tactical Human Intelligence Team (“THT”) 3, of the 313th Military Intelligence Battalion, 82nd Airborne Division that was deployed or stationed at the Forward Operating Base (“FB”) Shkin, located near Shkin and Agor Adda from 17 May 2002 through 31 December 2003;
 - d. The names, addresses, phone numbers and e-mail addresses all of persons who found the Shkin Meeting Letter;
 - e. The names, addresses, phone numbers and e-mail addresses of the THT 3 members that took possession of the Shkin Meeting Letter to include the affixed “capture tags” at or near the FB in 2003;

- f. All logs, log books, memorandums, documents or reports that depict the chain of custody of the Shkin Meeting Letter from the time it was found, by whom it was found, to whom and where the Shkin Meeting Letter was turned over for safe keeping from the date it was found to the present date;
- g. All logs, log books, memorandums, documents or reports that depict how and where the Shkin Meeting Letter was maintained and safe guarded from the time the letter was found to the present date;
- h. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency **regarding the transfer of the Shkin Meeting Letter** from the Department of Defense to the Federal Bureau of Investigation to include any information as to why the Shkin Meeting Letter was transferred, how it was transferred, where it was transferred and to whom it was transferred;
- i. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that identifies what statements contained within the Shkin Meeting Letter are the statements made by one of Mr. al-Tamir's alleged co-conspirators to include what alleged conspiracy the statements relate;
- j. The names, addresses, phone numbers and e-mail addresses of all of Mr. al-Tamir's alleged co-conspirators who made alleged co-conspirator statements contained within the Shkin Meeting Letter;
- k. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that identifies Mr. al-Tamir and his alleged co-conspirators were acting in furtherance of a conspiracy, to include which conspiracy charged on the charge sheet when the Shkin Meeting Letter was written;

- l. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that identifies the author of the Shkin Meeting Letter to include the date, time and place that the Shkin Meeting Letter was written;
- m. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that identifies, outlines or depicts the education, training and experience of CSM [REDACTED] 3rd Brigade Combat Team ("BCT"), 82nd Airborne Division, Department of Defense Criminal Investigative Division ("CID") to include all military and disciplinary records;
- n. All transcripts of hearings or depositions in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency in which CSM [REDACTED] has given testimony;
- o. A list, by case name, of all cases in which CSM [REDACTED] has testified whether the testimony was taken on behalf of the Government or Defense;
- p. The 3rd BCT, 82nd Airborne Division CID Standard Operating Procedures ("SOP") in relation to collection of evidence and use of capture tags in place at the time the Shkin Meeting Letter was found, located and identified through the date the letter was transferred from the DOD to the FBI;
- q. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that identifies, outlines or depicts the education, training and experience of **Special Agent ("SA") James Hodgson** to include all military and disciplinary records;
- r. All transcripts of hearings or depositions in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency in which SA James Hodgson has given testimony;

- s. A list, by case name, of all cases in which SA James Hodgson has testified whether the testimony was taken on behalf of the Government or Defense;
- t. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that relating to SA James Hodgson's interviews or interrogations of Mr. al-Tamir to include the location, place, time and conditions of each interview and interrogation;
- u. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that relating to SA James Hodgson's interviews or interrogations of any of Mr. al-Tamir's alleged co-conspirators, both known and unknown and witnesses to include the location, place, time and conditions of each interviews and interrogations;
- v. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that relate to the facility where the Shkin Meeting Letter and accompanying capture tags were maintained in **August of 2012**;
- w. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency of SA James Hodgson's **request to take custody** of the Shkin Meeting Letter and accompanying capture tags in 2012;
- x. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency **authorizing** SA James Hodgson to take custody of the any Shkin Meeting Letter whether it be the original or a copy and accompanying capture tags in 2012;

- y. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency describing the box marked OEF Operation Enduring Freedom Box 62 to include what Box 62 is, when it was “opened”, where Box 62 was located, the condition of Box 62 whether Box 62 had every been relocated or moved and if so to what locations;
- z. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency describing the contents inside the box marked OEF Operation Enduring Freedom Box 62;
- aa. All memoranda, correspondence, cables, email, notes, reports or other documents to include lists and photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency of all the missions and operations that took place inside the Afghanistan Theater of operation in May of 2003;
- bb. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that relates to the having the Shkin Meeting Letter translated from Pashtu to English;
- cc. The names, addresses, phone numbers and e-mail addresses of all of linguist who translated the Shkin Meeting Letter from Pashtu to English;
- dd. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that identifies the Shkin Meeting Letter as being written in Pashtu language to include the name, address, phone number and e-mail address of the person or persons who identified the language as Pashtu;

- ee. The name, address, phone numbers and e-mail address of all of linguist who reviewed the Shkin Meeting Letter with SA James Hodgson;
- ff. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that identifies the need to transfer or transport the Shkin Meeting Letter from CITF Headquarters in Ft. Belvoir, Virginia in 2012;
- gg. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that authorized the transfer or transport the Shkin Meeting Letter from CITF Headquarters in Ft. Belvoir, Virginia on 10 August 2012 to include: who transported the letter, how the letter was transported, where the later was transported and where and how was the letter was maintained after it was transported from CITF Headquarters in Ft. Belvoir;
- hh. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that identifies the need to transfer or transport the Shkin Meeting Letter to the FBI on 3 April 2013;
- ii. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that authorized the transfer or transport the Shkin Meeting Letter to Supervisory Special Agent [REDACTED] on 3 April 2013 to include: reason(s) for the delay 10 August 2012 to 3 April 2013 in transporting the Shkin Meeting Letter to the FBI;
- jj. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that describe a capturing unit to include: The purpose of a capturing unit; how many members are in a capturing unit and what type of training a capturing unit receives;

- kk. An un-redacted list, roster and spreadsheets of all persons in **capturing units** that participated in any operations in the Afghanistan Theater of Operations in from 1 January 2000 through 1 November 2006;
- ll. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that discusses, depicts or describes the Sensitive Site Exploitation ("SSE") locations in and around the vicinity of Shkin, Afghanistan from 1 January 2000 through 1 November 2006;
- mm. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency relating to items seized at SSE conducted in Afghanistan from 1 January 2000 through 1 November 2006;
- nn. Any and all documents, memorandum, correspondence, cables, email, letters, reports or notes to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, the Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that physical place Mr. al-Tamir at meetings with senior leadership from both al-Qaeda and the Taliban in Shkin, Afghanistan to include the date, time, place (location) of any said meetings;
- oo. Any and all documents, memorandum, correspondence, cables, email, letters, reports or notes to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, the Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that identifies Shkin, Afghanistan as the operational center for al-Qaeda to include the specific dates and timeframes in which Shkin, Afghanistan was used as the al-Qaeda operational center;
- pp. Any and all documents, memorandum, correspondence, cables, email, reports or notes to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, the Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that discuss, describe or identify Mr. al-Tamir as being responsible for an attack on U.S. forces located near Shkin on 29 September 2003;

- qq. Any and all documents, memorandum, correspondence, cables, email, letters, reports or notes to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, the Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that discuss or confirm any and all dates, times and places in which Mr. al-Tamir was physically present in Shkin, Afghanistan;
- rr. Any and all documents, memorandum, correspondence, cables, email, letters, reports or notes to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, the Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that demonstrates Mr. al-Tamir provided support to the Taliban;
- ss. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that confirms the list of “attendees” in the Shkin Meeting letter includes Senior Taliban commanders and war lords;
- tt. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that confirm there was an “actual” Shkin Meeting between Senior Taliban Commanders in Shkin, Afghanistan;
- uu. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that confirm there was an “actual” Shkin Meeting between “war lords” in Shkin, Afghanistan;
- vv. All un-redacted lists, spreadsheets, reports, or rosters to include names, last known address, phone number and e-mail address of war lords who attended any and all Shkin Meeting that resulted in the Shkin Meeting Letter;
- ww. All memoranda, correspondence, cables, email, notes, reports or other documents used by Mr. Evan Kohlmann to determine the al-Qaeda and Taliban leadership structure and to identify the role and stature in those organizations of participants listed in the Shkin Meeting Letter;

- xx. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency discussing or identifying **Sayf-al-Adal** as the Former director of security for al-Qaeda and his alleged responsibility for 7 August 1998 bombings of U.S. Embassies in Dar es Salaam, Tanzania, and Nairobi, Kenya;
- yy. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency discussing or identifying **Abu Muhammad al-Misiri** as the Former Emir of al-Qaeda al Farouq training camp and his alleged involvement with the 7 August 1998 bombings of U.S. Embassies in Dar es Salaam, Tanzania, and Nairobi, Kenya;
- zz. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that identify **Sulayman Abu Ghaid** as the al-Qaeda spokesperson to include all records, memoranda, correspondence, cables, e-mails, notes, reports or other documents relating to his U.S. federal court conviction for terrorist related activity in September 2014;
- aaa. All memoranda, correspondence, cables, email, notes or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that identify **Mukhtar-al-Balutis** ("KSM") as the former Senior al-Qaeda leader;
- bbb. All memoranda, correspondence, cables, email, notes or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that identifies **Haqqani Jal-al-Din** as Taliban official and creator of the Haqqani Network;

- ccc. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that identifies **Sayf-al-Rahman of Mawlana Masure** as the Taliban leader and Commander identified with shooting down a U.S. helicopter killing American Soldiers;
- ddd. The full names, date, time and location of all of the American Soldiers killed when the U.S. helicopter was shot down allegedly by the Taliban Leader and Commander, Sayf-al-Rahman of Mawlana;
- eee. The names, last known address, phone number and e-mail address of the next of kin of all of the American Soldiers killed when the U.S. helicopter was shot down allegedly by the Taliban Leader and Commander, Sayf-al-Rahman of Mawlana;
- fff. The full name, last known address, phone number and e-mail address of the U.S. Soldier that Mr. al-Tamir's alleged co-conspirator shot at or near L'Wara, Afghanistan and rendered blind;
- ggg. The full name, last known address, phone number and e-mail address of all individuals that were injured on or about 25 April 2003, at or near Shkin, Afghanistan by Mr. al-Tamir's alleged co-conspirators;
- hhh. The names, last known address, phone number and e-mail address of the next of kin of all of the American Soldiers killed in an attack on a U.S. convoy by Mr. al-Tamir's co-conspirators at or near Shkin, Afghanistan on or about 25 April 2003;
- iii. The full names, date, time and location of all of the American Soldiers killed in any attacks on U.S. convoy by Mr. al-Tamir's alleged co-conspirators on or about 25 April 2003;
- jjj. The names, last known address, phone number and e-mail address of Mr. al-Tamir's alleged co-conspirators that allegedly attacked a U.S. convoy in Shkin, Afghanistan, that shot a U.S. Soldier at or near L'Wara, Afghanistan and that shot down a U.S. helicopter in Afghanistan;
- kkk. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that identifies **Kashmir Khan** as the Commander of Hizb-i-Islami faction whose forces were situated in Kunar Province;

lll. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that identifies **Gulbadin Hekmatyar** as the Senior Taliban Commander and founder of Hezb-i-Islami with ties to al-Qaeda;

mmm. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that discuss, demonstrate or depict that Mr. al-Tamir allegedly fought for as the Senior Taliban Commander and founder of Hezb-i-Islami, Gulbadin (Hekmatyar);

nnn. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that identifies **Mawlana Bakht Jan** as the Taliban Commander and warlord;

ooo. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that depict, discuss or describe the alleged illegal conspiracy that Mr. al-Tamir and his alleged co-conspirators were in furtherance of when the Shkin Meeting Letter was written;

ppp. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that discuss, depict or provide the operational security and trade craft elements of the Taliban and al-Qaeda leadership to include but not limited to, the use of code words and separating the list of names on one page from the meeting location on a separate page;

- qqq. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that discuss, depict or demonstrate that Mr. al-Tamir conspired with **Usama bin Laden**, or any of his aliases, to commit various substantive offenses triable by military commissions between 1996 and on or about 1 November 2006;
- rrr. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that discuss, depict or demonstrate that Mr. al-Tamir conspired with **Ayman al Zawahiri**, or any of his aliases, to commit various substantive offenses triable by military commissions between 1996 and on or about 1 November 2006;
- sss. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that discuss, depict or demonstrate that Mr. al-Tamir conspired with **Mohammed Atef**, or any of his aliases, to commit various substantive offenses triable by military commissions between 1996 and on or about 1 November 2006;
- ttt. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that discuss, depict or demonstrate that Mr. al-Tamir conspired with **Khalid Shaikh Mohammad**, or any of his aliases, to commit various substantive offenses triable by military commissions between 1996 and on or about 1 November 2006;
- uuu. All memoranda, correspondence, cables, email, notes, reports or other documents to include photographs, charts, sketches or drawings in the possession of the Office of the Chief Prosecutor, the Office of the Convening Authority, The Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense or any other government agency that discuss, depict or demonstrate that Mr. al-Tamir conspired with “others” to commit various substantive offenses triable by military commissions between 1996 and on or about 1 November 2006 to include the names of the “other(s)” alleged co-conspirators;

11. If the Government believes that it has provided any of the specific items, information or evidence, throughout the course of the discovery process, the Defense request the Government identify in writing those items, information or evidence by Bates number and production date.

12. If any of the above requested items have been lost or destroyed, the Defense requests a list and description of the destroyed records; all summaries, transcripts, reconstructions, and memoranda regarding the destroyed records; the names and contact information for all persons who read or viewed the records before they were destroyed; the date and reason for their loss or destruction; and copies of any investigations pertaining to their loss or destruction. This request includes all said information relative to the 92 videotapes of CIA interrogations that the Government conceded was destroyed.

13. The Defense reserves the right to make additional discovery requests.

//s//
BRENT RUSHFORTH
Pro Bono Counsel

//s//
JEFFREY A. FISCHER
CAPT, JAGC, USN
Detailed Defense Counsel

//s//
AIMEE COOPER
CDR, JAGC, USN
Detailed Defense Counsel

//s//
ADAM THURSWELL
Assistant Defense Counsel

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of “Seventeenth Supplemental Request for Discovery ICO *United States v. Abd Al Hadi Al-Iraqi*” to be served on Trial Counsel via e-mail on 30 January 2017.

//s//
AIMEE M. COOPER
CDR, JAGC, USN
Defense Counsel

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ATTACHMENT C

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: [Non-DoD Source] RE: Request for position
Date: Friday, March 31, 2017 11:29:45 AM

Counsel:

The Government is in the process of responding to the Defense's Seventeenth Supplemental Discovery Request; therefore, the Government objects to the proposed motion.

V/r,
[REDACTED]
CDR, JAGC, USN
Trial Counsel
Office of the Chief Prosecutor
for Military Commissions
[REDACTED]

-----Original Message-----

From: [REDACTED] OSD OMC Defense [REDACTED]
Sent: Thursday, March 30, 2017 10:58 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Request for position

Trial Counsel:

We intend to file a motion requesting that the Commission compel the Government to respond to the Defense's Seventeenth Supplemental Discovery Request. Please let us know your position with respect to this relief.

V/r,

[REDACTED]

Military Commissions Defense Organization
1620 Defense Pentagon
Washington, DC 20301-1620

[REDACTED]