

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

UNITED STATES OF AMERICA v. ABD AL HADI AL IRAQI	AE 104 Defense Motion for Appropriate Relief to File Certain Classified Information in Mr. al-Tamir's Habeas Corpus Case 31 October 2017
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1. Timeliness.

This Motion is timely filed pursuant to Military Commissions Trial Judiciary Rule of Court 3.7.c.(1).

2. Relief Sought.

Mr. Nashwan al-Tamir respectfully seeks the Commission's appropriate relief to file AE 095 and AE 101 in his pending habeas corpus litigation in federal district court.

3. Overview.

Mr. al-Tamir has a pending habeas corpus case in the United States Federal District Court for the District of Columbia. As part of that litigation, he intends to include as exhibits to an upcoming Amended Petition¹ two appellate exhibits in this Commission case: AE 095 (Defense Notice) and AE 101 (Defense Motion for Appropriate Relief to Assure Mr. al-Tamir's Meaningful Right to Counsel). Both AE 095 and AE 101 contain information the government has determined to be classified. AE 013K (Third Amended Protective Order #1) prohibits the

¹ The District Court has set 1 November 2017 as a deadline for the filing at issue. Counsel for Mr. al-Tamir have prepared the classified filing and coordinated with the District Court's security officer to ensure compliance with handling procedures. Counsel, in reviewing AE 13K yesterday, recognized that a broad reading of AE 013K prohibits the filing of classified information in the District Court absent the Commission's consent, the relief sought herein. Mr. al-Tamir reserves the right to address the substantive issue—whether the relief sought herein is required—in future litigation.

use “in any other forum” “any classified information obtained as a result of [Mr. al-Tamir’s counsels’] participation in commission proceedings. . . .” Mr. al-Tamir, with the government’s consent, now seeks limited relief from AE 013K so that he may file, following appropriate handling procedures, AE 095 and AE 101 in his habeas corpus case. Mr. al-Tamir will comply with all applicable protective orders in the habeas case as well.

4. Burden of Proof.

As the moving party, the Defense must demonstrate by a preponderance of the evidence that the requested relief is warranted.²

5. Facts.

a. Mr. al-Tamir seeks habeas corpus relief in a case pending in the United States Federal District Court for the District of Columbia.

b. As part of his habeas corpus litigation, he intends to include as exhibits to an upcoming filing AE 095 and AE 101, two appellate exhibits in this Commission containing information the government has determined to be classified.

6. Law and Argument.

Appellate Exhibit 13K, the current Protective Order governing classified information in this case, prohibits the use “in any other forum” “any classified information obtained as a result of [Mr. al-Tamir’s counsels’] participation in commission proceedings. . . .”³

The prosecution of Mr. al-Tamir’s habeas corpus case requires the use of AE 095 and AE 101 in federal district court, an “other forum” for purposes of AE 13K. Mr. al-Tamir therefore seeks, with the government’s consent, limited relief from AE 13K that allows his counsel to file

² RMC 905(c)(2).

³ AE 13K at 10.

AE 095 and AE 101, following appropriate handling procedures, in his habeas corpus case.⁴ Mr. al-Tamir will comply with all applicable protective orders in the habeas case as well.

7. Conclusion.

For the foregoing reasons, the Defense requests that the Commission issue the Order at Attachment B.

8. Oral Argument.

The Defense waives oral argument.

9. Witness and Evidence.

The Defense does not intend to present witness testimony or evidence.

10. Conference with Opposing Counsel.

The Government does not object to the Commission permitting the Defense's use of AE 095 and AE 101 in its Federal habeas litigation, so long as such use is in accordance with the provisions of the protective orders of this Commission.

⁴ See Attach. B, Draft Order.

11. List of Attachments.

- A. Certificate of Service, dated 31 October 2017.
- B. Draft Order.

Respectfully Submitted,

//s//
BRENT RUSHFORTH
Pro Bono Counsel

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

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

//s//
ADAM THURSCHELL
Assistant Defense Counsel

Attachment A

CERTIFICATE OF NOTICE

I certify that on **31 October 2017**, I filed **AE 104 Defense Motion** for Appropriate Relief to File Certain Classified Information in Mr. al-Tamir's Habeas Corpus Case, and served a copy of the same on Government counsel of record and the Convening Authority.

//s//

ADAM THURSCHELL
Assistant Defense Counsel

Attachment B

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

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>ABD AL HADI AL IRAQI</p>	<p>AE 104A</p> <p>ORDER</p> <p>Defense Motion for Appropriate Relief to File Certain Classified Information in Mr. al- Tamir's Habeas Corpus Case</p> <p>XX October 2017</p>
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Upon consideration of AE 104, Mr. al-Tamir's Motion for Appropriate Relief to File Certain Classified Information in his habeas corpus case, to which the government does not object, the Commission finds that counsel for Mr. al-Tamir may file AE 095 and AE 101 in the United States Federal District Court for the District of Columbia, abiding by all laws and procedures applicable to the filing of classified information in that Court.

So **ORDERED** this XX day of