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[REDACTED] United States v. Mohammed, et.al.: Defense (Mr. bin al Shibh)
Request for Relief: PO 007 Relief (Task Force Memorandum) (U)

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Sir:

Detailed defense counsel for Mr. bin al Shibh respectfully submit the following Special Request for Relief for consideration by the Commission:

1. Relief Requested:

a. The defense respectfully requests relief from Protective Order 7, and other applicable Protective Orders issued in this case, for the limited purpose of allowing detailed defense counsel to submit classified information to the Guantanamo Review Task Force ("Task Force") for its consideration while it conducts a review of the appropriate disposition of this case.

2. Facts:

a. On 21 January 2009, the Commission granted the Government's Motion for a 120-day continuance, finding that "the interests of justice" to allow the new Administration time to review this and other cases, and the Military Commission's process and rules as a whole, outweighed the best interests of the accused and public in a prompt trial. See Order, P-009, para. 1. The next day, President Obama ordered an immediate review, to be coordinated by the U.S. Attorney General, of the status of every individual detained at Guantanamo. See Executive Order 13492, Sec. 4.

b. On 23 March 2009, Mr. Matthew G. Olsen, U.S. Department of Justice,

Executive Director, Guantanamo Review Task Force, provided notice to the Office of the Chief Defense Counsel, Office of Military Commissions ("OMC-D"), that the Task Force was interested in obtaining the views and input of OMC-D attorneys who represent individual detainees in the Military Commissions process. These submissions are due no later than 15 April 2009.

3. Justification:

a. Detailed defense counsel for Mr. bin al Shibh intend to submit memoranda to the Task Force concerning the continued detention and trial of Mr. bin al Shibh. A portion of the information the defense intends to submit will be classified information. See PO 007, at para. 6.f. Pursuant to applicable Protective Orders, the defense is prohibited from disseminating or discussing any of this information with any entity outside of the defense team. See *id.*, at para. 10 (the defense interprets the prohibition broadly, to include statements from the accused, information that is presumptively classified).

b. The defense does not consider a submission to the Task Force to be a "proceeding," as contemplated by Protective Order # 7, para. 13. Thus, it does not intend to comply with the Notice requirement under MCRE 505(g). However, in order to avoid "disciplinary action or other sanctions," the defense comes now to the Commission seeking an exception to the applicable protective orders, particularly Protective Order # 7.

c. The defense intends to provide the classified portion of the memorandum to Mr. Powell, Senior Security Advisor, or his designee, for distribution to the Task Force. This will eliminate any risk of an unauthorized disclosure of classified information and is necessary because the defense is unable to confirm that each member of the Task Force has the prerequisite security clearance and been determined by the Original Classification Authority to have a "need to know."

d. The classified information the defense seeks to disclose to the Task Force is crucial to a full and fair review of Mr. bin al Shibh's case, including a determination as to his transfer and continued prosecution. The requested relief from the restriction of the protective orders is appropriate because it is narrowly tailored to allow the defense to provide classified information only to U.S. Government officials, who invited input from the defense. Granting the requested relief will ensure that all relevant matters are considered by the Task Force as it conducts the review ordered by the President.

4. Conference:

Pursuant to RC 3.3, the defense conferred with the prosecution concerning this request. The prosecution acknowledges the conference but requires additional time to confirm its position and notes that it will articulate its position in its response.

Very Respectfully,

Richard E.N. Federico
Lieutenant, JAG Corps, U.S. Navy
Defense Counsel

Office of the Chief Defense Counsel
Office of the Military Commissions
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