
UNITED STATES OF AMERICA

v.

SALIM AHMED HAMDAN

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)
) DEFENSE RESPONSE TO
) GOVERNMENT MOTION TO
) COMPEL DISCOVERY (P6)
)
)
) 22 October 2004
)

1. Timeliness. This response is filed timely in accordance with POM 4-2, given the date of receipt imputed to the Defense was 20 October 2004.

2. Relief Sought. That the Defense is in compliance with the discovery requirements as found in Military Commission Instruction Number 8.

3. Facts (The Defense Responds to the Government's Original Request for Reciprocal Discovery, 30 July 2004).

a. The Defense shall provide notice of any request or intent to request the commission take conclusive notice of facts not subject to reasonable dispute to the prosecution at least one week prior to the start of the Military Commission in this case, or sooner if so ordered by the Presiding Officer.

b. The Defense shall provide notice of any evidence, to include testimony, documents or physical evidence that the Defense intends to introduce on either the merits or in sentencing that may constitute classified or protected information to the prosecution at least one week prior to the start of the Military Commission in this case, or sooner if so ordered by the Presiding Officer.

c. The Defense shall provide copies of any demonstrative evidence that the Defense intends to introduce on the merits or in sentencing in compliance with MCI 8, paragraph 6(A).

d. The Defense has provided and will continue to provide all Curriculum Vitae for our requested experts.

e. The Defense is not required to provide such statement/documentation (statements, signed, reviewed, or adopted that relate to this prosecution in any manner of a witness that the defense intends to call on either the merits or the sentencing phase) unless the Defense intends to introduce such evidence at trial.

f. The Defense has provided a synopsis of witness testimony with our lay witness requests and our expert witnesses. Since our original requests, we have supplemented them with additional expected testimony and relevancy to the case.

g. The Defense shall provide the requested documents and information (all documents and information used by a witness to prepare for trial, to include any writings or documents used

to refresh memory for the purpose of testifying, either while testifying or prior to testifying) to the prosecution at least one week prior to the start of the Military Commission in this case.

4. Law and Discussion.

a. The Defense is aware of its discovery obligations under Military Commission Instruction (MCI) 8. At present the Defense has either provided or is not required to provide any of the material requested by the Prosecution. In accordance with the requirements set out by the Presiding Officer, the Defense has provided the names, contact information, a summation of testimony and a Curriculum Vitae for all expert witnesses that the Defense intends to call in support of its motions during the 8 November hearing.

b. The Prosecution is not entitled to further Discovery at this time. Specifically:

1) Regarding the Prosecution's demand that the Defense provide a list of witnesses and a summation of their testimony pursuant to (MCI) 8. the Presiding Officer has set a date of 30 days prior to trial for the Defense to request from the government all witnesses that it intends to request be produced for trial. Accordingly the Defense is not obligated to provide the names of its witnesses at trial until 8 November 2004. The Defense, however, is mindful of the Presiding Officer's urging to provide the names of witnesses as soon as they may be identified to prevent delay in the proceedings and as such is providing the names of witnesses, summations of testimony and contact information for witnesses as such witnesses are identified. To date the Defense has provided the government with three fact witnesses and will continue to provide such information when identified.

2) Documentary evidence. Pursuant to MCI 8 the Defense is required to provide the documentary evidence it intends to admit at least one week prior to trial.

3) Copies of previous statements made by witness intended to be called by the Defense. MCI 8 does not require the production of such statements. It should be noted that the Prosecution has similarly refused to produce agent notes, recording of interviews or other documents from which the reports of interrogation of Mr. Hamdan and other detainees were produced. To require the defense to produce statements of its witnesses when the Prosecution will not produce all writings and recordings of the government's agents is hardly comporting with a "full and fair trial."

4) Notification of potential defense based lack of mental responsibility. The Defense requested appointment of a forensic psychiatric team in April 2004 and renewed its request on 17 September 2004. The defense was notified of partial approval of its request on 20 October 2004. Upon completion of said exam the defense will provide the appropriate notice of if applicable. Until such an examination has been preformed we cannot provide notice.

5. Files Attached. None.

6. Oral Argument. The Defense agrees with the Prosecution that oral argument is neither required nor requested.

7. Authority Cited.

MCI No. 8

8. Witnesses/Evidence Required. None.

9. Additional Information. None.

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