MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA v. MOHAMMED KAMIN	**D-003B** **Defense Reply** to Government Response to Defense Motion for Appropriate Relief Order for Production of Discovery 21 July 2008

1. **Timeliness:** This Reply is timely filed in accordance with Military Commissions Trial Judiciary Rules of Court, Rule 3.6.c.(2).

2. **Additional Relevant Facts:** None.

3. **Discussion:**

a. In its response to **D-003**, the government requests the Commission "allow for the proper discovery procedures to take place to protect the national security interests of the United States of America." *See* Government Response, ¶ 5.c. This statement is the sole glimpse behind the curtain as to what continues to delay progression of this trial.

b. The defense appreciates the need and interests of the United States government to protect national security. However, there must be a balance of this interest with the right of an accused to receive a fair trial. This balance must "protect and restrict the discovery of classified information in a way that does not impair the defendant's right to a fair trial." *United States v. Dumeisi*, 424 F.3d 566, 578 (7th Cir. 2005)(quoting *United States v. O'Hara*, 301 F.3d 563, 569 (7th Cir. 2002)); *see also United States v. Moussousai*, 365 F.3d 292 (4th Cir. 2004), reh'g granted, 382 F.3d 453 (4th Cir. 2004); *United States v. Cardoen*, 898

F.Supp. 1563, 1571 (S.D. Fla 1995); *United States v. Anderson*, 872 F.2d 1508, 1519 (11th Cir. 1989); *Abu Marzook*, 412 F.Supp. 2d at 918; *United States v. North*, 698 F.Supp. 316, 320 (D.D.C. 1988). Without question, Mr. Kamin's right to a fair trial is impaired with each day of further delay in the production of discovery by the government.[1] As stated in **D-003**, the government cannot hide behind a classification review by "equity holders" as an excuse for further delay of providing discovery to the defense.

c. In **D-004**, the defense sought a modification of the trial schedule to stay or suspend all deadlines previously ordered until the government meets its discovery obligation. The defense hereby reaffirms the relief in sought in **D-003** and **D-004** – the Commission shall order the government to meet its discovery obligations and all remaining deadlines should be stayed or suspended until an adequate discovery response is provided. Remarkably, the government provides nothing in its response to suggest it does not concur with such relief being granted. *See* Government Response to **D-003**, ¶5.a ("the prosecution intends to make additional production of materials…The prosecution has been gathering the material discussed in Defense Counsel's discovery requests."), ¶5.b ("The Government needs time…the Government is expeditiously working on responding to each specific request…").

d. The relief sought by the defense will *de facto* result in a continuance being granted. No period of delay resulting from a continuance being granted by the military judge shall be excludable for speedy trial purposes unless the judge sets forth "the identity of the party or parties responsible for the delay." R.M.C. 707(b)(4)(E)(ii)(B).

[1] As it noted, the government did not file its response to **D-003** in accordance with the timelines under the applicable rules. Brashly ignoring deadlines is indicative of the government's casual and lethargic efforts to ensure timely litigation of this case.

Any delay incurred as a result of any relief provided shall be attributable to the government and its various "equity holders." It would be nonsensical to simultaneously find that the defense cannot proceed further without discovery and also that delays waiting for the discovery to be provided be attributable to the defense. Such a result could potentially prejudice Mr. Kamin of his fundamental rights to speedy due process, if and when, he seeks to exercise them.

4. **Request for Oral Argument:** The defense reaffirms that it does not request oral argument. Based upon the government's response, there appears to be no dispute as to any material fact necessary for resolution of any issues. As such, the defense sees no reason to hold a hearing on 30 July 2008 at GTMO as the Military Judge can and should issue an Order based upon the written pleadings.

5. **Witness Request:** None.

Respectfully submitted,

By: *//s// Richard E.N. Federico*
LT RICHARD E.N. FEDERICO, JAGC, USN
Detailed Defense Counsel for
Mohammed Kamin
Office of the Chief Defense Counsel
Office of Military Commissions
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