

UNITED STATES OF AMERICA

v.

SALIM AHMED HAMDAN

Defense Request for Production of Witnesses
for Trial Commencing 28 May 2008

28 February 2008

Pursuant to R.M.C. 703 and in accordance with Regulation 16 the Defense requests that the Government produce the following out-of-country witnesses at trial scheduled to commence 28 May 2008:

- 1. Nasser al-Bahri**
Sana'a, Yemen



Synopsis of Expected Testimony

Mr. al-Bahri served as Osama bin Laden's chief of security, and for a period of time headed up his bodyguard force. During that period of time he had personal knowledge as to the membership of bin Laden's bodyguard detail. He is expected to testify that Mr. Hamdan never joined al Qaeda and had no interest in fighting. Mr. al-Bahri is expected to testify that Mr. Hamdan returned to Afghanistan in 2000 because he learned that Mr. al-Bahri was questioned by Yemeni security forces and was concerned that he would be considered suspicious because of his association with Mr. al-Bahri. Mr. al-Bahri will also testify that he was present when film of Mr. Hamdan was taken in which he appeared in uniform and accompanying Osama bin Laden and will testify as to the circumstances surrounding those pictures.

Relevance and Necessity of Testimony

Mr. al-Bahri's testimony is relevant as it will establish that Mr. Hamdan was not a member of al Qaeda during the time period alleged in the charge sheet, that Mr. Hamdan did not return to Afghanistan in 2000 to fight, and that Mr. Hamdan was a salaried employee not involved in Osama bin Laden's terrorist activities. Mr. al-Bahri's testimony is essential as it will demonstrate that Mr. Hamdan's association with bin Laden was purely professional. Mr. al-Bahri's testimony concerning the circumstances surrounding the film in which Mr. Hamdan appears in uniform is essential to provide the members all relevant information about that film and to rebut testimony of government witnesses.

2. **Muhammed Ali Qassim al-Qala'a**

Tunis Street
Sana'a, Yemen



Synopsis of Expected Testimony

Mr. al-Qala is Mr. Hamdan's brother-in-law. He is expected to testify regarding Mr. Hamdan's moderate religious and cultural beliefs, reputation in the community, lack of interest in fighting, and the reasons why Mr. Hamdan and his family were in Afghanistan in 2001. Mr. al-Qala is expected to testify that Mr. Hamdan is not a Muslim extremist, was not a member of al Qaeda and never espoused anti-American beliefs, had no interest in fighting and was in Afghanistan in 2001 for employment purposes. Mr. al-Qala is expected to testify that Mr. Hamdan returned to Afghanistan in 2000 because Mr. al-Qala informed him that Yemeni security forces had interviewed their brother-in-law and that it was not safe for Mr. Hamdan to return to Sana'a.

Should Mr. Hamdan be convicted, Mr. al-Qala will also testify in the sentencing phase of the proceedings. Mr. al-Qala will testify about Mr. Hamdan's family circumstances, including the fact that Mr. Hamdan's family is settled in Yemen and that Mr. al-Qala supports Mr. Hamdan's wife and two young daughters. Mr. al-Qala will testify that Mr. Hamdan would not return to Afghanistan or to fight upon his release and that Mr. Hamdan would be able to obtain employment in Yemen after his return.

Relevance and Necessity of Testimony

Mr. al-Qala's testimony is relevant as it will establish Mr. Hamdan's nature of peacefulness and that he was not a fighter. Mr. al-Qala's testimony is also relevant to the circumstances surrounding Mr. Hamdan's travel to Yemen in 2000 and his return to Afghanistan. As Mr. al-Qala is a family member of Mr. Hamdan, witness bias may be raised as an issue in the case. It is therefore essential that he testify in person so that the commission can judge his character and truthfulness.

Mr. al-Qala's testimony in the sentencing phase is relevant to the members' ability to consider mitigating factors with respect to sentence. Mr. al-Qala's testimony is necessary to provide the members with information about Mr. Hamdan's family's circumstances, his chances for employment and the support system waiting for him upon his return to Yemen.

3. **Umat al-Subur Ali Qassim al-Qala'a**

[REDACTED]
Sana'a, Yemen

[REDACTED]
Synopsis of Expected Testimony

Mrs. al-Qala is Mr. Hamdan's wife. She is expected to testify as to Mr. Hamdan's reasons for traveling to Afghanistan in 1999 and 2001 and the reason Mr. Hamdan did not leave Afghanistan with his wife in 2001. Mrs. al-Qala is expected to testify that Mr. Hamdan traveling to Afghanistan in 1999 with her in search of employment and that he never joined al-Qaeda. Mrs. al-Qala is also expected to testify that Mr. Hamdan and she returned home to Yemen in August 2000 with the intent of remaining there. However, Yemeni security forces questioned Mr. Hamdan's brother-in-law and he decided it would be safer for his family to return to Afghanistan and to return to his previous employment. Mrs. al-Qala is expected to testify that Mr. Hamdan returned to Afghanistan after taking her and their daughter to the Pakistani border because it was not safe for Arab men to cross at that time.

Relevance and Necessity of Testimony

Mrs. al-Qala's testimony will establish that Mr. Hamdan was not a member of al-Qaeda. As Mrs. al-Qala is a family member of Mr. Hamdan, witness bias may be raised as an issue in the case. It is therefore essential that she testify in person so that the commission can judge her character and truthfulness.

4. **Abdallah Tabarak**

Casablanca, Morocco

Synopsis of Expected Testimony

Mr. Tabarak was Osama bin Laden's chief bodyguard. He will testify that Mr. Hamdan was merely a paid member of bin Laden's motor pool. Mr. Tabarak will testify that Mr. Hamdan had no knowledge of and never participated in terrorist activities.

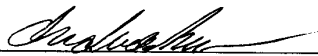
Relevance and Necessity of Testimony

As chief bodyguard for bin Laden, Mr. Tabarak is in the best position to testify as to whether Mr. Hamdan was also a bodyguard. Mr. Tabarak worked with bin Laden from 1989 until his capture in 2001 and will be able to testify regarding

Mr. Hamdan's relationship with bin Laden and his lack of role in al Qaeda. Mr. Tabarak's testimony is necessary to rebut the government's evidence that Mr. Hamdan was something other than a driver in bin Laden's motor pool.

The Defense notes that Mr. al-Bahri and Mr. Tabarak are likely ineligible for transport and clearance to Guantanamo Bay, Cuba. The Defense also notes that Mr. al-Qala and Mrs. al-Qala, while in possession of valid passports, might be ineligible for transport and clearance to Guantanamo Bay or might otherwise be unable to appear at trial. Accordingly, the Defense requests that the Prosecution join in a request to the Military Judge to order depositions of Mr. al-Bahri, Mr. Tabarak, Mrs. al-Qala and Mr. al-Qala. The Defense believes the interest of justice will be served by deposing these witnesses to allow the presentation Mr. al-Bahri's and Mr. Tabarak's deposition testimony at trial and to ensure that, should forces beyond our control prevent the appearance of Mr. al-Qala and Mrs. al-Qala, Mr. Hamdan's defense will not be hindered by the absence of their personal appearance.

Respectfully submitted,

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