

IBRAHIM AHMED MAHMOUD
AL QOSI

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

) IN THE COURT OF MILITARY
) COMMISSION REVIEW
)
)
) **UNITED STATES' RESPONSE TO**
) **THE U.S.C.M.C.R'S 11 MARCH 2017**
) **ORDER**
)
)
) CMCR Case No. 17-001
)
) Pled Guilty at Guantánamo Bay, Cuba
) on 7 July 2010
) before a Military Commission
) convened by Hon. Susan J. Crawford
)
) Presiding Military Judge
) Lieutenant Colonel Nancy Paul, USAF
)
) Date: March 23, 2017

**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF
MILITARY COMMISSION REVIEW**

On March 11, 2017, this Court ordered that, on or before March 23, 2017, “the Government shall file with the Court a statement signed by counsel for the Government stating whether the Government contends that al Qosi is an enemy belligerent, privileged or unprivileged, currently or at any time since his 2012 release and repatriation, and the factual basis for the Government’s contention.” Order at 3 (Mar. 11, 2017). The United States contends that al Qosi is currently an unprivileged enemy belligerent.

The factual basis for the Government’s contention is a Defense Intelligence Agency (DIA) assessment.¹ This assessment is based, among other things, upon publicly available information, including public statements by al Qosi himself,² as well as public statements of other members of al Qaeda in the Arabian Peninsula (AQAP).³ This information supports the contention that al Qosi serves as a spokesman for AQAP and has urged continued jihad against the United States. Additionally, the DIA assesses al Qosi has likely reengaged in terrorist associated activities since at least late-2015.⁴

¹ See Attach. A (DIA, U//FOUO assessment, current as of 22 March 2017).

² See *Interview of Abu-Khubayb al-Sudani* [a.k.a., Ibrahim Al Qosi], INSPIRE, Spring 2016 ed., at 51-62 (“INSPIRE interview”) (recording that Al Qosi is honored as a scholar of *sharia* and religious leader); *al-Qa’idah in the Arabian Peninsula—Guardians of Shari’ah*, <https://videopress.com/v/S5f0AMvb> (last visited Mar. 22, 2017) (“*Guardians of Shari’ah*”) (depicting, in video published by AQAP, al Qosi’s exhortations of mujahideen to jihad), *English subtitled version available at* <http://iplayerhd.com/player/video/01c7be58-11ef-48dc-b6b6-9dd5ebf0567b/share> (last visited 22 March 2017).

³ *Guardians of Shari’ah*, *supra* note 2; *Prophecy Realized: Ex-Gitmo Detainee, UBL Aide Resurfaces on Battlefield in Yemen*, FOXNEWS.COM (Dec. 10, 2015), <http://www.foxnews.com/world/2015/12/10/former-guantanamo-detainee-makes-appearance-in-latest-al-qaeda-in-yemen-video.html> (stating that al Qosi, “also known by the nom de guerre Sheikh Khubayb al Sudani” “is one of the terror group’s top leaders” in Yemen, and is “an especially high-profile spokesman” for AQAP).

⁴ See Attach. A.

Al Qosi meets the definition of an unprivileged enemy belligerent under the Military Commissions Act of 2009 (M.C.A.). The M.C.A. defines an “unprivileged enemy belligerent” as follows:

UNPRIVILEGED ENEMY BELLIGERENT.—The term “unprivileged enemy belligerent” means an individual (other than a privileged belligerent) who—

- (A) has engaged in hostilities against the United States or its coalition partners;
- (B) has purposefully and materially supported hostilities against the United States or its coalition partners; or
- (C) was a part of al Qaeda at the time of the alleged offense under this chapter.⁵

Al Qosi satisfies this definition because he has “purposefully and materially supported hostilities against the United States or its coalition partners,” and he is “a part of al Qaeda.” Al Qosi’s own words and the public statements of other leaders in Al Qaeda demonstrate that, at a minimum, he is a member, a revered scholar, and a “Sheikh” or “Shaykh” of AQAP.⁶ In jihadist videos and newspapers published by AQAP, he has encouraged violence against the United States and “the West.”⁷ The Director of the Defense Intelligence Agency has testified that

⁵ 10 U.S.C. § 948a(7).

⁶ In addition to the sources cited *supra*, see also Thomas Joscelyn, *Ex-Guantanamo Detainee Now an al Qaeda Leader in Yemen*, LONG WAR JOURNAL (Dec. 9, 2015), <http://www.longwarjournal.org/archives/2015/12/ex-guantanamo-detainee-now-an-al-qaeda-leader-in-yemen.php> (“Qosi joined AQAP in 2014 and became one of its leaders,” and Al Qosi “is also known as Sheikh Khubayb al Sudani.”).

⁷ In addition to the sources cited *supra*, see also Rowan Scarborough, *Gitmo Detainee Released by Obama Resurfaces in al Qaeda Terrorist Video*, WASH. TIMES (Dec. 10, 2015), <http://www.washingtontimes.com/news/2015/dec/10/guantanamo-detainee-obama-released-appears-in-al-q/> (“A former Guantanamo inmate [Al Qosi] whom the Obama administration released on assurances that he would not go back to terrorism has emerged as a top al Qaeda leader in a video urging Muslims to kill Americans.”); Anthony Kimery, *Former Al Qaeda Detainee Promises ‘Creative and New’ Attacks on USA*, HOMELAND SECURITY TODAY (Aug. 22, 2016, 6:47 PM), <http://www.hstoday.us/briefings/daily-news-analysis/single-article/former-al-qaeda-detainee-promises-creative-and-new-attacks-on-us/23d4947ed597c2d546d0e74b6f729828.html> (Al Qosi “vowed in an article published by Al

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent by electronic mail to Mark Harvey, the Clerk of the Court for the Court of Military Commission Review, Edward Loughran, Assistant Clerk of the Court for the Court of Military Commission Review, Mary R. McCormick, appellate defense counsel, and Suzanne Lachelier, assistant appellate defense counsel, on this 23rd day of March, 2017.

//s//

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ATTACHMENT A

(U//FOUO) DIA assesses Ibrahim al-Qosi (aka Shaykh abu-Khubayb al-Sudani) has likely reengaged in terrorist associated activities, since at least late-2015, based on his pro-jihadi writings in al-Qa'ida and al-Qa'ida in the Arabian Peninsula (AQAP) publications and identification as an AQAP shura member and commander.

- (U//FOUO) In August 2016, Ibrahim al-Qosi, identified as an AQAP shura member, authored an article in an AQAP publication urging readers to prepare for the coming Al-Aqsa "grand battle," and threatening additional attacks like 9/11 from homegrown violent extremists. He also appeared in several pro-AQAP videos commemorating deceased AQAP members, and two February 2016 videos that praised the mujahideen for their actions in Saudi Arabia and Somalia and criticized the Saudi government's policies in Syria and Yemen.
- (U//FOUO) In December 2015, al-Qosi released a video statement praising the merger between al-Qa'ida in the Islamic Maghreb (AQIM) and Al-Murabitun, paying his respects to Al-Qa'ida leader Ayman al-Zawahiri, and renewing his "pledge of allegiance" to now deceased Afghan Taliban leader Mullah Akhtar Mansur. He also urged his "brothers in Islam" to "unite against our enemy" and vowed to "liberate the holy places of Muslims." In a later video he called on "scholars" to step up to Islam's crucial battle, praised AQIM for recent operations, and threatened the West, stating: "The Western people in New York and Paris will not enjoy peace while our people in Palestine and other places are terrified." i ii iii iv v vi vii viii

¹ (U//FOUO) FBIS; TRO2016082344422021; 232343Z AUG 16; (U//FOUO) (TRO2016082344422021) YEMEN: PRO-AQAP AL-MASRA ITEM URGES READERS TO Prepare for 'Al-Aqsa Grand Battle,' Infiltrate Abroad CITE OSC RESTON VA 392353; Overall classification is U//FOUO.

² (U//FOUO) FBIS; TRR2016081855280452; 312110Z AUG 16; (U//FOUO) (TRR2016081855280452) REVISION: YEMEN: AQAP VIDEO EULOGY PART 1 ON FIGURE Al-Hadrami Covers Alleged Prison Escape, 'Poetry' CITE OSC RESTON VA 446596; Overall classification is U//FOUO.

³ (U//FOUO) OSC; TRR2016071356736636; 152255Z JUL 16; (U//FOUO) ANSAR AL-SHARIA, AQAP VIDEO CONDEMNS US KILLING OF AQAP Commander Al-Zirjilbari, Promotes Jihad CITE OSC RESTON VA 137983; Overall classification is U//FOUO.

⁴ (U//FOUO) OSC; TRR2016051458964889; 161654Z MAY 16; (U//FOUO) REVISION: ALERT: AQAP RELEASES ISSUE 15 OF INSPIRE Magazine Inciting Lone Wolf Attacks in US; Overall classification is U//FOUO.

⁵ (U//FOUO) FBIS; TRR2016020873604605; 101342z Feb 16; (U//FOUO) (TRR2016020873604605) YEMEN: AQAP'S AL-QUSI DENOUNCES SAUDI REGIME FOR Supporting 'Crusaders,' Praises 'Mujahideen'; Overall classification is U//FOUO.

⁶ (U//FOUO) FBIS; TRR2016022579211932; 291310z Feb 16; (U//FOUO) (TRR2016022579211932) AQAP'S AL-QUSI PRAISES 'MUJAHIDEEN OF SOMALIA,' Warns Against 'Path of Negotiations'; Overall classification is U//FOUO.

⁷ (U//FOUO) TRR2015121311742199; 132146Z DEC 16; (U//FOUO) SENIOR AQAP FIGURE PRAISES AQIM, AL-MURABITUN Merger. Renews 'Pledge of Allegiance' to Taliban; Overall classification U//FOUO

⁸ (U//FOUO) TRR2015122608746554; 302031Z DEC 15; AQAP EULOGIZES SLAIN AQIM SHARIA HEAD AL-BULAYDI, Calls Scholars to Key 'Battle', Threatens West; Overall Classification U//FOUO.