

IN A GENERAL COURT-MARTIAL  
SECOND JUDICIAL CIRCUIT, U.S. ARMY TRIAL JUDICIARY  
FORT BRAGG, NORTH CAROLINA

UNITED STATES )  
 )  
 v. )  
 ) Fifth Defense Motion to Compel  
SGT Robert B. Bergdahl )  
HHC, Special Troops Battalion )  
U.S. Army Forces Command )  
Fort Bragg, North Carolina 28310 ) 14 December 2016

RELIEF SOUGHT

The Defense moves to compel production and requests other appropriate relief as described in detail below.

BURDEN OF PERSUASION AND BURDEN OF PROOF

The Defense, as the moving party, has the burden of proof. The standard of proof is a preponderance of the evidence.

FACTS/ARGUMENT

On 14 and 15 November, 2016, an evidentiary hearing was held regarding the Government's Motion *in limine* to admit evidence of injuries in the Government case in chief. During the hearing, witnesses testified about the existence of documentation the Defense believes should have been turned over pursuant to the Government's discovery obligations.

On 18 November 2016, the defense submitted a discovery request to ensure that we receive the relevant material. [Enclosure 1]. The defense followed up for a response on 5 December 2016 and again on 9 December 2016. [Enclosure 2]. The Government finally responded in the afternoon of 13 December 2016. [Enclosure 3]. That same evening, the Government provided an email to the Court identifying a new "universe of several thousand documents" that are responsive to the recent request. [Enclosure 4].

The Defense moves for production and other appropriate relief for the matters set forth below:

## 1. ITEM 4 OF SIXTH DEFENSE DISCOVERY REQUEST

### a. The Request & Response

Item 4 of the sixth defense discovery request was as follows:

*All operation and fragmentary orders for missions where the Government alleges that Soldiers have been injured or killed while searching for SGT Bergdahl.*

The Government's Response to Item 4 was as follows:

*Upon information and belief all material responsive to this request have been provided or will be made available in accordance with the relevant rule and, as appropriate, subject to the provisions of Military Rule of Evidence ("MRE") 505.*

The above request and response are similar to Item 5 of the second defense discovery request, dtd. 26 May 2016 [Enclosure 6 to D APP 22 - #36]:

*Documentation related to the planning of missions where the prosecution contends that individuals died or were wounded while searching for the accused.*

The Government's Response to Item 5 was dtd. 14 June 2016 [Enclosure 7 to D APP 22 - #43]:

*The Government has provided and will continue to provide information responsive to the request. When additional items responsive to this request become available, the Government will supplement subject to M.R.E. 505.*

### b. Relief Sought

The Defense moves the Court to order the Government to state plainly the following: (i) if the requested documents have been disclosed, what are the bates stamp numbers; (ii) if the Government has not yet located the requested documents, the Defense requests that the Court order the Government to disclose the steps taken to search for the requested material; and (iii) if the Government anticipates that the responsive documents are included in the new "universe of several thousand documents" recently discovered, the Defense asks the Court to admonish the Government to adhere to their Discovery obligations. Based on the 26 May request and 14 June response, the documents should have been included within their original limited "universe" of documents.

### c. Argument

The Government's response is effectively teasing the Defense. The Government equivocates regarding whether the requested documentation has been disclosed or will be disclosed. If it has been disclosed, the Defense requests that they abide by the

Court's 7 July 2016 order to provide the particular bates stamp numbers. The Government has electronic discovery software that allows them to search the millions of pages in their possession for the responsive documentation. The Defense does not yet have that capability.

Assuming the Government has not yet turned over the requested material, it must do so. The requested information is material and would assist the defense in formulating strategy, tactics, and lines of investigation. See *United States v. Webb*, 66 M.J. 89, 91 (C.A.A.F. 2008); *United States v. Eshalomi*, 22 M.J. 12, 27 (C.M.A. 1986). Even back in May 2016, the Government did not object to the necessity of turning over the requested documents. After the hearing on 14 and 15 November, the relevance of the requested documents came into even sharper focus. For the particular mission that was the subject of the motion *in limine*, the operation orders are directly relevant to whether or not the Soldiers were part of TF Yukon and the extent of their mission. The documentation is critical to determine whether proffered evidence the Government intends to present is relevant at all.

If the Government has not yet located the requested information, the Defense asks the Government to disclose what steps they have taken to find the material. A trial counsel may not remain ignorant and must exercise due diligence in discovering materials in the possession, control, or custody of other military authorities. See *United States v. Trigueros*, 69 M.J. 604, 611 (Army Ct. Crim. App. 2010). Again, an example of relevant documents responsive to the request came to light at the 14 and 15 November hearing. Although we do not have access to a transcript, the Defense recalls that the Government's own witnesses testified to the existence of operation orders responsive to the Defense requests. The Defense further recalls that the witnesses, LTC Robert Campbell and LTC Peter Minalga, testified that the responsive documents would have been shared via email.

If the requested information is expected to be found among their new "universe of several thousand documents", given the 26 May 2016 request and 14 June 2016 response, the question arises as to why the documents were not among their original limited "universe" of documents. The Government should not create a limited "universe" of documents and then fail to exercise due diligence in discovering material outside of that limited "universe", no matter how vast that "universe" may be. Cf. *Trigueros* at 611. The true "universe" of documents to be discovered cannot be artificially limited by the Government. The Defense requests that the Court admonish the Government to review how their original limited "universe" was created and ensure that they are abiding by their discovery obligations.

In summary, the Defense requests that the Government provide the documentation requested for the mission that was the subject of their motion *in limine* as well as any other mission responsive to the request. If they have not found the material, given the evidence that the materials exist, the Defense asks the Court to admonish the Government to exercise the appropriate due diligence, even if it means searching beyond their artificially limited "universe" of documents.

## 2. ITEM 5 OF SIXTH DEFENSE DISCOVERY REQUEST

### a. The Request & Response

Item 5 of the sixth defense discovery request was as follows:

*All documentation which shows the task organizations and/or command relationships for Soldiers and/or units of the following Commands in 2009:*

- a. 4-25
- b. 1-40 CAV. 4-25
- c. 3/503, 4-25
- d. 1/501, 4-25
- e. TF Yukon
- f. TF Phoenix
- g. Afghan Regional Security Integration Command (ARSIC)
- h. Combined Security Transition Command Afghanistan (CSTC-A)
- i. International Security Assistance Force (ISAF)
- j. US Forces Afghanistan

The Government's Response to Item 4 was as follows:

*Denied in part. The Government objects to portions of the request as overbroad. a-e: The Government has disclosed, or will disclose, responsive information, in accordance with the applicable rules and in compliance with the timelines established by the Rules for Court and the pretrial order. f-j. The Government will provide responsive documents, subject to the provisions of MRE 505, for the Embedded Training Team that the Government alleges suffered casualties [sic] while tasked to Task Force Yukon in July 2009. To the extent the request seeks additional information, the Government objects as overbroad.*

### b. Relief Sought

The Defense moves the Court to order the Government to state plainly the following: (i) if the requested documents have been disclosed, what are the bates stamp numbers; and (ii) if the Government has not yet located the requested documents, the Defense requests that the Court order the Government to disclose the steps taken to search for the requested material.

### c. Argument

For the reasons stated in the argument section of Point 1, the Government is effectively teasing the Defense. For the information they have agreed to provide, if they have disclosed the material, they should tell us where to find it. If they have not, they should tell us that as well.

For the material that the Government describes as overbroad, the Defense objects to the limitation as set forth in their response. The Defense does not agree that the ETT that was the subject of the motion *in limine* was tasked to Task Force Yukon. That being the case, the Defense does not anticipate that the Government will be able to provide responsive documentation if they limit their search to what does not exist.

### 3. ITEM 6 OF SIXTH DEFENSE DISCOVERY REQUEST

#### a. The Request & Response

Item 6 of the sixth defense discovery request was as follows:

*All documentation which shows the standard operating procedures (SOP) including the minimal force requirements for tactical missions relating to the following Commands in 2009*

- k. 4-25
- l. 1-40 CAV. 4-25
- m. 3/503, 4-25
- n. 1/501, 4-25
- o. TF Yukon
- p. TF Phoenix
- q. Afghan Regional Security Integration Command (ARSIC)
- r. Combined Security Transition Command Afghanistan (CSTC-A)
- s. International Security Assistance Force (ISAF)
- t. US Forces Afghanistan

The Government's Response to Item 6 was as follows:

*Denied in part. The Government objects to portions of the request as overbroad. The Government will seek responsive documents, subject to the provisions of MRE 505, for the Embedded Training Team that the Government alleges suffered casualties while tasked to Task Force Yukon in July 2009. To the extent the request seeks additional information, the Government objects as overbroad.*

#### b. Argument

The Defense objected to the limitation as set forth in the Government's response. The Government is contending that SGT Bergdahl endangered Soldiers and caused their injuries. Evidence of the standard operating procedures for all of the units listed in the request are important to help the defense investigate the intervening causes of the endangerment and the injuries in question. Furthermore, it is probable that multiple SOPs were in force at the time and should be read together in order to have a complete understanding of the SOPs and minimal force requirements that were in effect. Finally, the Defense must investigate whether the SOPs were proper and will need to make the comparison to SOPs of other units that were conducting similar types of missions.

#### 4. ITEM 8 OF SIXTH DEFENSE DISCOVERY REQUEST

##### a. The Request & Response

Item 8 of the sixth defense discovery request was as follows:

*To the extent the documentation is not captured in any of the above requests, the Defense seeks specific guidance that existed in 2009 related to minimal force requirements for Soldiers accompanying Afghan National Army Soldiers.*

The Government's Response to Item 8 was as follows:

*The Government objects to the request on the grounds that it is vague and overbroad.*

##### b. Argument

There is nothing vague or overbroad about the Defense request. The Defense has learned, through the recent motion *in limine*, that they intend to present evidence of endangerment and injuries to Soldiers that were part of an ETT. At the hearing on 14 and 15 November, there was testimony that minimal force requirements existed for Soldiers accompanying Afghan National Army Soldiers. The Defense requires that documentation.

#### 5. ITEM 11 OF SIXTH DEFENSE DISCOVERY REQUEST

##### a. The Request & Response

Item 11 of the sixth defense discovery request was as follows:

*Names and contact information for members of any unit that responded to the location where SFC Allen and SPC Morita were injured.*

The Government's response to Item 11 was as follows:

*Denied. The Government objects to production of the evidence on the grounds that the evidence would be irrelevant, cumulative or unnecessary.*

##### b. Argument

During the evidentiary hearing on 14 and 15 November, we learned that other units responded to the location where the Government claims that Soldiers were injured searching for the accused. The Soldiers that responded to the location are percipient witnesses to what transpired at the location where the Soldiers are alleged to have been injured. The Soldiers also would have knowledge of how they were dispatched, where they were dispatched from, and the speed in which they were dispatched. The Defense has tried to locate these members through the Government's witnesses, however, they

are not aware specifically of what units responded to the location. Testimony from these witnesses is critical for the Defense to investigate other intervening causes for the injuries, as well as the extent of those injuries, that the Government alleged were caused by SGT Bergdahl.

### CONCLUSION

For the foregoing reasons, the Defense respectfully requests that the Court direct the Government to provide the requested disclosures and other appropriate relief.



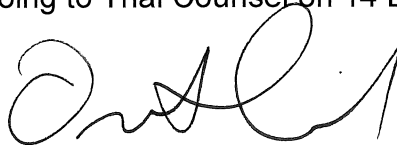
OREN GLEICH  
MAJ, JA  
Defense Counsel

*For*

EUGENE R. FIDELL  
LTC FRANKLIN D. ROSENBLATT  
MAJ JASON D. THOMAS  
MAJ OREN GLEICH  
CPT JENNIFER D. NORVELL  
CPT NINA BANKS

### CERTIFICATE OF SERVICE

I certify that I emailed the foregoing to Trial Counsel on 14 December 2016.



OREN GLEICH  
MAJ, JA  
Defense Counsel

**IN A GENERAL COURT-MARTIAL  
IN THE SECOND JUDICIAL CIRCUIT, U.S. ARMY TRIAL JUDICIARY  
FORT BRAGG, NORTH CAROLINA**

UNITED STATES	)	
	)	
v.	)	Sixth Defense Discovery
	)	Request
	)	
BERGDAHL, ROBERT BOWDRIE	)	
(BOWE)	)	
SGT, U.S. Army	)	
HHC, Special Troops Battalion	)	18 November 2016
U.S. Army Forces Command	)	
Fort Bragg, North Carolina 28310	)	

This is the Defense's sixth general discovery request. This request supplements and does not supersede the Defense's previous discovery requests.

1. The Accused, by and through his defense attorneys, hereby requests that the Government provide the following information with:
  - a. A written response to this request; and
  - b. Production of the requested matters; or
  - c. Notice of an inability or intent not to comply.
  
2. This requested evidence is relevant and material to the preparation of the defense and/or is exculpatory. The accused cannot properly provide effective assistance of counsel nor prepare for trial without the production of the documents and items requests. Requested information is information known, or should, with the exercise of due diligence, be known to the United States or its agents. Production includes the opportunity to inspect, photograph, and photocopy.
  
3. The following specified discovery requests are based on testimony elicited during the motion hearing on 14 and 15 NOV 2016.
  
4. All operation and fragmentary orders for missions where the Government alleges that Soldiers have been injured or killed while searching for SGT Bergdahl.

5. All documentation which shows the task organizations and/or command relationships for Soldiers and/or units of the following Commands in 2009:

- a. 4-25
- b. 1-40 CAV. 4-25
- c. 3/503, 4-25
- d. 1/501, 4-25
- e. TF Yukon
- f. TF Phoenix
- g. Afghan Regional Security Integration Command (ARSIC)
- h. Combined Security Transition Command Afghanistan (CSTC-A)
- i. International Security Assistance Force (ISAF)
- j. US Forces Afghanistan

6. All documentation which shows the standard operating procedures (SOP) including the minimal force requirements for tactical missions relating to the following Commands in 2009

- a. 4-25
- b. 1-40 CAV, 4-25
- c. 3/503, 4-25
- d. 1/501, 4-25
- e. TF Yukon
- f. TF Phoenix
- g. Afghan Regional Security Integration Command (ARSIC)
- h. Combined Security Transition Command Afghanistan (CSTC-A)
- i. International Security Assistance Force (ISAF)
- j. US Forces Afghanistan

7. Specific guidelines set forth by the Air Force limiting their personnel from engaging in certain types of missions during 2009.

8. To the extent the documentation is not captured in any of the above requests, the Defense seeks specific guidance that existed in 2009 related to minimal force requirements for Soldiers accompanying Afghan National Army Soldiers.

9. Searching for the above information should include, and not be limited to, email communication from the following individuals:

- a. Peter Minalga
- b. Robert Campbell
- c. James Shuto
- d. Peter Molin
- e. Robert Altman
- f. Steven Huber
- g. Richard Formica

- h. David Patraeus
- i. Stanley McChrystal
- j. Jim Dutton
- k. Eric Bachelor
- l. John Marx
- m. Tim Crider
- n. Kevin Plagman
- o. Curtis Scaparrotti

10. Any documentation of the Command relationship between the 203 Corps of the Afghan National Army and any units subordinate to US Forces Afghanistan in 2009. This request should include any Soldiers that were under the command of General Sayed Malook of the Afghan National Army.

11. Names and contact information for members of any unit that responded to the location where SFC Allen and SPC Morita were injured.

12. The defense reserves the right to make additional and continuing discovery requests.

GLEICH.OREN [REDACTED]  
[REDACTED]

OREN GLEICH  
MAJ, JA  
Defense Counsel

I certify that I have served or caused to be served a true copy of the above on the Trial Counsel on 18 November 2016.

GLEICH.OREN [REDACTED]  
[REDACTED]

OREN GLEICH  
MAJ, JA  
Defense Counsel

**Gleich, Oren MAJ USARMY XVIII ABN CORPS (US)**

---

**From:** Gleich, Oren MAJ USARMY XVIII ABN CORPS (US)  
**Sent:** Friday, December 09, 2016 3:19 PM  
**To:** Oshana, Justin C MAJ USARMY FORSCOM (US); Fussnecker, Jerrod B MAJ USARMY FORSCOM (US); Whipple, Eileen C CPT USARMY 16 MP BDE (US)  
**Cc:** Thomas, Jason D MAJ USARMY XVIII ABN CORPS (US); Rosenblatt, Franklin D LTC USARMY (US); Fidell, Eugene; Norvell, Jennifer D CPT USARMY ICOE (US); Scapicchio, Louis M CPT USARMY (US)  
**Subject:** RE: Sixth Discovery Request (UNCLASSIFIED)  
**Classification:** UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

Government:

Just seeing if there are any updates on this and what the anticipated response date will be.

v/r

OREN GLEICH  
MAJ, JA  
Defense Counsel

Trial Defense Services  
O: (910) 908-6090

-----Original Message-----

**From:** Oshana, Justin C MAJ USARMY FORSCOM (US)  
**Sent:** Monday, December 05, 2016 11:57 AM  
**To:** Gleich, Oren MAJ USARMY XVIII ABN CORPS (US) <oren.gleich.mil@mail.mil>; Fussnecker, Jerrod B MAJ USARMY FORSCOM (US) <jerrod.b.fussnecker.mil@mail.mil>; Whipple, Eileen C CPT USARMY 16 MP BDE (US) <eileen.c.whipple.mil@mail.mil>  
**Cc:** Thomas, Jason D MAJ USARMY XVIII ABN CORPS (US) <jason.d.thomas62.mil@mail.mil>; Rosenblatt, Franklin D LTC USARMY (US) <franklin.d.rosenblatt.mil@mail.mil>; Fidell, Eugene <eugene.fidell@yale.edu>; Norvell, Jennifer D CPT USARMY ICOE (US) <jennifer.d.norvell2.mil@mail.mil>  
**Subject:** Re: Sixth Discovery Request (UNCLASSIFIED)

MAJ Gleich,

Yes. We are working with the appropriate agencies to determine whether some of the material exists and how best to search for it before we respond.

v/r,

MAJ Oshana

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message

From: Gleich, Oren MAJ USARMY XVIII ABN CORPS (US)

Sent: Monday, December 5, 2016 9:57 AM

To: Oshana, Justin C MAJ USARMY FORSCOM (US); Fussnecker, Jerrod B MAJ USARMY FORSCOM (US); Whipple, Eileen C CPT USARMY 16 MP BDE (US)

Cc: Thomas, Jason D MAJ USARMY XVIII ABN CORPS (US); Rosenblatt, Franklin D LTC USARMY (US); Fidell, Eugene; Norvell, Jennifer D CPT USARMY ICOE (US)

Subject: RE: Sixth Discovery Request (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Government: Are you guys going to respond to this request?

-----Original Message-----

From: Gleich, Oren MAJ USARMY XVIII ABN CORPS (US)

Sent: Friday, November 18, 2016 2:53 PM

To: Oshana, Justin C MAJ USARMY FORSCOM (US) <justin.c.oshana.mil@mail.mil>; Fussnecker, Jerrod B MAJ USARMY FORSCOM (US) <jerrod.b.fussnecker.mil@mail.mil>; Whipple, Eileen C CPT USARMY 16 MP BDE (US) <eileen.c.whipple.mil@mail.mil>

Cc: Thomas, Jason D MAJ USARMY XVIII ABN CORPS (US) <jason.d.thomas62.mil@mail.mil>; Rosenblatt, Franklin D LTC USARMY (US) <franklin.d.rosenblatt.mil@mail.mil>; Fidell, Eugene <eugene.fidell@yale.edu>; Norvell, Jennifer D CPT USARMY ICOE (US) <jennifer.d.norvell2.mil@mail.mil>

Subject: Sixth Discovery Request (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Government:

I know we spoke about this but just wanted to make the request official. Please see the attached discovery request.

v/r

OREN GLEICH  
MAJ, JA  
Defense Counsel

Trial Defense Services  
O: (910) 908-6090

CLASSIFICATION: UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

**IN A GENERAL COURT-MARTIAL  
IN THE SECOND JUDICIAL CIRCUIT, U.S. ARMY TRIAL JUDICIARY  
FORT BRAGG, NORTH CAROLINA**

UNITED STATES	)	
	)	
v.	)	Government Response to
	)	Sixth Defense Discovery Request
BERGDAHL, ROBERT BOWDRIE	)	
(BOWE)	)	
SGT, U.S Army	)	
HHC, Special Troops Battalion	)	13 December 2016
U.S. Army Forces Command	)	
Fort Bragg, North Carolina 28310	)	

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The Government responds as follows to the Sixth Defense Discovery Request, dated 18 November 2016. Paragraph numbers correspond to the Defense requests.

**4. All operation and fragmentary orders for missions where the Government alleges that Soldiers have been injured or killed while searching for SGT Bergdahl.**

Response: Upon information and belief all material responsive to this request have been provided or will be made available in accordance with the relevant rule and, as appropriate, subject to the provisions of Military Rule of Evidence ("MRE") 505.

**5: All documentation which shows the task organizations and/or command relationships for Soldiers and/or units of the following Commands in 2009:**

- a. 4-25
- b. 1-40 CAV, 4-25
- c. 3/503, 4-25
- d. 1/501, 4-25
- e. TF Yukon
- f. TF Phoenix
- g. Afghan Regional Security Integration Command (ARSIC)
- h. Combined Security Transition Command Afghanistan (CSTC-A)
- i. Combined Security Assistance Force (ISAF)
- j. US Forces Afghanistan

Response: Denied in part. The Government objects to portions of the request as overbroad.

a-e: The Government has disclosed, or will disclose, responsive information, in accordance with the applicable rules and in compliance with the timelines established by the Rules for Court and the pretrial order.

f-j. The Government will provide responsive documents, subject to the provisions of MRE 505, for the Embedded Training Team that the Government alleges suffered casualties while tasked to Task Force Yukon in July 2009. To the extent the request seeks additional information, the Government objects as overbroad.

**6: All documentation which shows the standard operating procedure (SOP) including the minimal force requirements for tactical missions relating to the following commands in 2009:**

- a. 4-25
- b. 1-40 CAV. 4-25
- c. 3/503, 4-25
- d. 1/501, 4-25
- e. TF Yukon
- f. TF Phoenix
- g. Afghan Regional Security Integration Command (ARSIC)
- h. Combined Security Transition Command Afghanistan (CSTC-A)
- i. Combined Security Assistance Force (ISAF)
- j. US Forces Afghanistan

Response: Denied in part. The Government objects to portions of the request as overbroad. The Government will seek responsive documents, subject to the provisions of MRE 505, for the Embedded Training Team that the Government alleges suffered casualties while tasked to Task Force Yukon in July 2009. To the extent the request seeks additional information, the Government objects as overbroad.

**7: Specific guidelines set forth by the Air Force limiting their personnel from engaging in certain types of missions during 2009.**

Response: The Government will seek access, subject to the provisions of MRE 505, to responsive documents.

**8: To the extent the documentation is not captured in any of the above requests the Defense seeks specific guidance that existed in 2009 related to minimal force requirements for Soldiers accompanying Afghan National Army Soldiers.**

Response: The Government objects to the request on the grounds that it is vague and overbroad.

**9: Paragraph 9 of the Defense request does not constitute a request for discovery. As such, no response is required.**

**10: Any documentation of the Command relationship between the 203 Corps of the Afghan National Army and any units subordinate to the US Forces Afghanistan in 2009. This request should include any Soldiers that were under the command of General Sayed Malook of the Afghan National Army.**

Denied in part. The Government objects to portions of the request as overbroad. The Government will seek responsive documents, subject to the provisions of MRE 505, for the Embedded Training Team that the Government alleges suffered casualties while tasked to Task Force Yukon in July 2009. To the extent the request seeks additional information, the Government objects as overbroad.

**11: Names and contact information for members of any unit that responded to the location where SFC Allen and SPC Morita were injured.**

Response: Denied. The government objects to production of the evidence on the grounds that the evidence would be irrelevant, cumulative or unnecessary.



JERROD B. FUSSNECKER  
MAJ, JA  
Trial Counsel

CF:  
Defense Counsel

**Gleich, Oren MAJ USARMY XVIII ABN CORPS (US)**

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**From:** Oshana, Justin C MAJ USARMY FORSCOM (US)  
**Sent:** Tuesday, December 13, 2016 6:14 PM  
**To:** Nance, Jeffery R COL USARMY HQDA (US)  
**Cc:** Rosenblatt, Franklin D LTC USARMY (US); Fidell, Eugene; Gleich, Oren MAJ USARMY XVIII ABN CORPS (US); Thomas, Jason D MAJ USARMY XVIII ABN CORPS (US); Banks, Nina S CPT USARMY 1 CD (US); Norvell, Jennifer D CPT USARMY ICOE (US); Fussnecker, Jerrod B MAJ USARMY FORSCOM (US); Whipple, Eileen C CPT USARMY 16 MP BDE (US); Craver, Stacy C CIV (US)  
**Subject:** US v Bergdahl Subject: Government Discovery Update

Your Honor,

In advance of Friday's Article 39(a), the Government provides the following update on the discovery process.

To date, we have identified 32,312 discoverable documents. We have made available 26,739 documents to the Defense. We have 3,130 documents that we are preparing to turn over to the Defense, and 2,048 documents that we are still working to send to OCAs. There are 310 documents that have either been invoked on by an OCA or will be invoked over by 15 December, and will ultimately require your review. There are 8 documents that we anticipate receiving permission to disclose to the Defense by 15 December.

The status of the remaining 77 documents was covered in an ex parte and classified email that the Government sent the Court via JWICS earlier.

Finally, the Defense submitted a sixth discovery request on 18 November, which includes requests for material from several entities that no longer exist. We have been working with CENTCOM, who we believe is most likely to have the material, and have initially identified a universe of several thousand documents. We have not yet received those documents, but will work to review them as expeditiously as possible once we do.

v/r,

JUSTIN C. OSHANA

MAJ, JA

Trial Counsel

U.S. Army Forces Command

Fort Bragg, North Carolina

(910) 570-5922