

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/11-01/25

Date: 25 June 2026

PRE-TRIAL CHAMBER I

Before: Judge Iulia Antoanella Motoc, Presiding
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge María del Socorro Flores Liera

SITUATION IN LIBYA

IN THE CASE OF THE PROSECUTOR v. KHALED MOHAMED ALI EL HISHRI

PUBLIC

Public Redacted Version of “Defence Response to Prosecution Second Request for Contact Restrictions”, ICC-01/11-01/25-52-Conf, 13 January 2026

Source: Defence for Mr Khaled Mohamed Ali El Hishri

Document to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

☒ The Office of the Prosecutor

☒ Counsel for the Defence

☐ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☒ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

☐ States' Representatives

☐ Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☒ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. The Defence for Mr Khaled Mohamed Ali El Hishri (“Defence”) files this response to the Prosecution’s second requests for contact restrictions by which it applies to the Pre-Trial Chamber (“PTC”) for an order to the Registry to implement a regime separating Mr El Hishri from Arabic-speaking detainees at the ICC Detention Centre (“DC”).¹
2. The Defence objects to the Second Request. The Initial Second Request was dismissed by the PTC, and the Amended Second Request was declared moot because it sought the same remedy as the Initial Second Request. The Further Request adds nothing new to the Amended Second Request and in all material respects seeks the same remedy again. The matter is *res judicata* and should be dismissed *in limine*.
3. In any event, the risks identified by the Prosecution seeking to justify the Second Request are speculative and too remote. As such, the Second Request is neither justified, necessary nor proportionate.
4. The Defence also respectfully asks for a variation of the time limit, pursuant to Regulation 35 of the Regulations of the Court (“RoC”), to file this response.

¹ Lesser Redacted Version of “Confidential Redacted Version of ‘Prosecution’s provision of additional information regarding contact restrictions and second request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court’, ICC-01/11-212-US-Exp, 31 October 2025”, ICC-01/11-01/25-21-Conf-Red, 3 December 2025, ICC-01/11-01/25-21-Conf-Red2, 19 December 2025 (“Initial Second Request”); Lesser Redacted Version of “Confidential Redacted Version of ‘Prosecution’s provision of additional information regarding its requests for contact restrictions and amended second request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court’, ICC-01/11-220-US-Exp, 1 December 2025”, ICC-01/11-01/25-25-Conf-Red, 4 December 2025, ICC-01/11-01/25-25-Conf-Red2, 19 December 2025 (“Amended Second Request”); Prosecution’s further request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court, ICC-01/11-01/25-31-US-Exp, 4 December 2025 (reclassified as confidential on 18 December 2025) (“Further Request”) (together, “Second Request”)

II. CLASSIFICATION

5. This response is classified as confidential pursuant to Regulation 23*bis*(2) of the RoC because it is responsive to documents filed with the same classification.

III. REQUEST FOR VARIATION OF TIME

6. Regulation 35(2) of the RoC in relevant part provides:

The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard.

7. The reclassified confidential version of the Further Request was filed on 18 December 2025. The lesser redacted versions of the Initial Second Request and Amended Second Request were filed on 19 December 2025. In accordance with Regulation 33(1)(c), the time limit for this response began to run on Monday, 22 December 2025, making the deadline Wednesday, 31 December 2025. This period included two official holidays of the Court, 25 and 26 December 2025.

8. Counsel for Mr El Hishri travelled from The Hague back to his country of residence on 18 December 2025. He did not see the reclassified confidential version of the Further Request before travelling. Moreover, he encountered technical difficulties in his home country making it difficult for him to regularly and reliably access the Citrix system and his ICC emails. He returned to The Hague in the evening of 5 January 2026 but was only able to familiarise himself with the lesser redacted details of the Second Request on 8 January 2026. This was the first time he understood that the Prosecution sought to separate Mr El Hishri from Arabic-speaking detainees at the DC.

9. It was necessary for full instructions to be obtained from Mr El Hishri on 6, 7, 9 and again on 12 January 2026 before filing this response. The Defence has additionally been making enquiries as to whether any part of the Second Request has been granted by the PTC on an interim basis in the same way interim contact restrictions on Mr El Hishri

communications with persons outside the DC were granted on 1 December 2025.² The Defence understands now that no such interim relief has been granted. Nevertheless, Mr El Hishri has *de facto* been segregated from Arabic-speaking detainees.

10. The Defence respectfully requests that the PTC find that good cause has been shown to accept this response as valid notwithstanding its filing out of time. The requested variation of time is short, and no prejudice will be caused to the Prosecution. Further, the question of contact between Mr El Hishri and other detainees with whom he can communicate in his language is important.

IV. PROCEDURAL HISTORY

11. On 10 July 2025, PTC issued the warrant of arrest against Mr El Hishri.³

12. On 16 July 2025, Mr El Hishri was arrested in the Federal Republic of Germany.

13. On 4 August 2025, the Prosecution filed its first request for “measures to restrict Mr EL HISHRI’s communications from the Detention Centre in The Hague immediately upon his surrender to the International Criminal Court” (“First Request”).⁴

14. On 31 October 2025, more than a month before Mr El Hishri’s transfer to the custody of the Court, the Prosecution filed additional information said to be of relevance to the First Request, together with the Initial Second Request. This was the Prosecution’s first attempt to apply for Mr El Hishri’s segregation from co-detainees at the DC.

² Email decision entitled “[Confidential] Order to the Registry [*to provisionally implement contact restrictions*]”, 1 December 2025 at 19:37

³ Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri, ICC-01/11-188-US-Exp, 10 July 2025; ICC-01/11-188-US-Exp-tARB, 15 July 2025; reclassified as public on 31 July 2025

⁴ Prosecution’s request for contact restrictions pursuant to regulation 101(2) of the Regulations of the Court”, ICC-01/11-201-US-Exp, 4 August 2025, para. 1; confidential redacted version filed on 3 December 2025, ICC-01/11-01/25-10-Conf-Red

15. On 26 November 2025, the PTC issued its first decision on contact restrictions (“First Decision”) in which it *inter alia* dismissed the Initial Second Request but invited the Prosecution to file an amended request.⁵

16. On 1 December 2025, the Prosecution filed additional information regarding its request for contact restrictions and the Amended Second Request.

17. Also on 1 December 2025, Mr El Hishri was transferred from Germany to the custody of the Court.

18. Later on 1 December 2025, the PTC issued by email an urgent order to the Registry to provisionally implement the contact restrictions requested in paragraphs 27 and 28 of the First Request.⁶

19. On 2 December 2025, the PTC found that the Amended Second Request “is in fact seeking the same remedy as the one sought by way of the [Initial] Second Request” which it had dismissed in the First Decision, and declared the Amended Second Request moot.⁷

20. On 4 December 2025, the Prosecution filed the Further Request. As mentioned at paragraph 7 above, the details of the Further Request were only reclassified as confidential on 18 December 2025. The remedy sought in the Further Request is in all material respects the same as that applied for in the Amended Second Request.

V. APPLICABLE LAW

21. Regulation 101(2) of the RoC provides as follows:

⁵ First decision on contact restrictions, ICC-01/11-219-US-Exp, 26 November 2025, para. 7 (reclassified as confidential on 18 December 2025), ICC-01/11-01/25-24-Conf

⁶ Email decision entitled “[Confidential] Order to the Registry to provisionally implement contact restrictions”, 1 December 2025 at 19:37

⁷ Email decision entitled “[Ex parte – 1/11] Decision on ‘Prosecution’s provision of additional information regarding its requests for contact restrictions and amended second request for contact restrictions’”, 2 December 2025 at 16:39

2. The Prosecutor may request the Chamber seized of the case to prohibit, regulate or set conditions for contact between a detained person and any other person, with the exception of counsel, if the Prosecutor has reasonable grounds to believe that such contact:

- (a) Is for the purposes of attempting to arrange the escape of a detained person from the detention centre;
- (b) Could prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation;
- (c) Could be harmful to a detained person or any other person;
- (d) Could be used by a detained person to breach an order for non-disclosure made by a judge;
- (e) Is against the interests of public safety; or
- (f) Is a threat to the protection of the rights and freedom of any person.

VI. SUBMISSIONS

(a) *The matter is res judicata*

22. The principle of *res judicata* applies only to the accused in a particular case.⁸ The question for a Chamber is whether an earlier decision which was not appealed disposed of the same matter.⁹

23. In this case, the Prosecution initially asked the PTC to “restrict and closely monitor Mr EL HISHRI’s contact and communications with other detainees at the DC” noting that “[t]hese risks are particularly acute in relation to Arabic-speaking detainees.”¹⁰

24. The Initial Second request was dismissed in the First Decision, with reasons to follow.

25. In the Amended Second Request, the Prosecution requested an order that the Registry “separate Mr EL HISHRI from Arabic-speaking co-detainees [that is, Messrs [REDACTED], [REDACTED] and [REDACTED]] until the Chamber issues its decision

⁸ ICTY, *Prosecutor v Delić*, No. IT-04-83-PT, Decision on the Prosecution’s Submission of Proposed Amended Indictment and Defence Motion Alleging Defects in Amended Indictment, 30 June 2006, para. 42

⁹ ICC, *Lubanga* case, Judgment on the Prosecutor’s appeal of the decision of Pre-Trial Chamber I entitled “Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence”, ICC-01/04-01/06-568, 13 October 2006, para. 23

¹⁰ Initial Second Request, para. 21

on the confirmation of charges.”¹¹ But the PTC found that the Amended Second Request “is in fact seeking the same remedy as the one sought by way of the [Initial] Second Request” which it had dismissed in the First Decision, and declared the Amended Second Request moot.¹² The Defence is not aware of any Prosecution appeal against this finding.

26. The Further Request purports to amend the Amended Second Request,¹³ but in reality does no such thing. The exact same order is requested in the Further Request as in the “moot” Amended Second Request: the Registry is once again asked to (partially) separate Mr El Hishri from Arabic-speaking co-detainees until the Chamber issues its decision on the confirmation of charges,¹⁴ although no explanation is given as to what, concretely, is meant by “partially”. According to the application in the Further Request, Mr El Hishri will be entirely, not partially, separated from other Arabic-speaking co-detainees in the DC, exactly as was requested in the Amended Second Request.

27. There is no material difference between the relief sought in the Further Request and the relief held to be “moot” in the Amended Second Request. The PTC disposed of exactly the same matter, and in respect of the same suspect in the same case, in its email decision of 2 December 2025. Consequently, the Defence respectfully submits that the PTC should find the matter *res judicata* and dismiss the Further Request *in limine*.

(b) The risks identified in the Second Request are speculative and too remote

28. In any event, the risks identified by the Prosecution seeking to justify the Second Request are speculative and too remote. The Second Request is neither justified, necessary nor proportionate.

¹¹ Amended Second Request, paras 6 and 11

¹² Email decision entitled “[Ex parte – 1/11] Decision on ‘Prosecution’s provision of additional information regarding its requests for contact restrictions and amended second request for contact restrictions’”, 2 December 2025 at 16:39

¹³ Further Request, para. 2

¹⁴ Further Request, para. 2

29. In the Amended Second Request, the Prosecution argues that segregating Mr El Hishri from other Arabic-speaking co-detainees “is necessary to prevent [him] from using fellow detainees to disseminate confidential information, which would endanger the safety and security of victims, witnesses, and their families, and ultimately compromise the integrity of the proceedings.”¹⁵ The same point is made in the Further Request.¹⁶

30. However, the Prosecution’s arguments are based on pure speculation. Even if *arguendo* Mr El Hishri had the means and intention to interfere with victims, witnesses and the proceedings in general, which is strongly denied, the success of any such efforts relies entirely on the willingness of his Arabic-speaking co-detainees to agree with and execute such a plan. There is simply no evidence to support such a contention.

31. The Prosecution refers to Mr El Hishri’s purported influence¹⁷ which provides him with the means to exert authority over (Arabic-speaking) detainees, whereas paragraphs 15-16 of the First Request exclusively discuss his alleged influence within the Libyan context, and over SDF/RADA members. The Prosecution points to no evidence to support the contention that he could exercise authority or influence over detainees [REDACTED], [REDACTED] or [REDACTED].

32. The Prosecution also wrongly suggests that for those co-detainees who [REDACTED]. This is untrue. [REDACTED].¹⁸ There are no reasonable grounds to believe, and it is unrealistic to suggest, that [REDACTED]. Any such suggestion would be built on speculation.

¹⁵ Amended Request, para. 7

¹⁶ Further Request, para. 5

¹⁷ Initial Second Request, para. 21, referring to First Request, paras 15-16

¹⁸ [REDACTED]

33. Against that background, the argument that [REDACTED] does not take the Prosecution's argument any further. The Prosecution does not even take the trouble to explain which [REDACTED]. [REDACTED].¹⁹

34. Similarly, [REDACTED].²⁰ [REDACTED]. [REDACTED].

35. Firstly, the Defence notes that [REDACTED]. [REDACTED].²¹ [REDACTED].

36. Secondly, there are no reasonable grounds to believe, and it is unrealistic to suggest, that [REDACTED] (i) [REDACTED], and (ii) [REDACTED]. The argument that [REDACTED] is not only devoid of any evidential foundation, it is insulting.

VII. CONCLUSION

37. In conclusion, the risks identified by the Prosecution are speculative and too remote to justify the Second Request. The Prosecution has fallen far short of the "reasonable grounds to believe" test provided for in Regulation 101(2) of the RoC.

38. Consequently, as it did with the Initial Second Request and Amended Second Request, the PTC should dismiss the Second Request in its entirety.

Respectfully submitted,



Yasser Hassan
Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 25 June 2026

at The Hague, The Netherlands

¹⁹ [REDACTED] do not support the Prosecution's argument.

²⁰ [REDACTED]

²¹ [REDACTED]