

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA****UNITED STATES OF AMERICA**

v.

**KHALID SHAIKH MOHAMMAD,
WALID MUHAMMAD SALIH
MUBARAK BIN 'ATTASH,
RAMZI BINALSHIBH,
ALI ABDUL AZIZ ALI,
MUSTAFA AHMED ADAM AL
HAWSAWI****AE 149L****ORDER**Joint Defense Motion for Return
of Computer Hard Drive
and Back-up DVDs

22 November 2013

1. The Accused filed a joint motion to compel the Government to return to their Defense Counsel the hard drives of the computers provided to each Accused by the Government and used by each Accused during and after the Commission proceedings initiated under the 2006 Military Commission Act. The motion also requested the Commission order the U.S. Government to “delete, purge, wipe or otherwise eliminate any and all copies from any electronic data storage and retrieval system(s) in their possession or under their control.” (AE149) The Prosecution did not oppose granting Defense Counsel access to the laptop computers. (AE 149A).
2. During oral argument on the motion¹ the Prosecution represented it intends to return the laptops and associated media to Counsel for each Accused, but wants the Counsel to sign a memorandum of understanding addressing where the laptops would be retained.² During questioning from the Commission it was clarified the memorandum of understanding was an acknowledgement classified information may be resident on or in the materials to be returned

¹ See generally Unofficial/Unauthenticated Transcript of the Khalid Shaikh Mohammad et al. (2) Motions Hearing Dated 10/25/2013, pages 7133-67.

² *Id.* at p7150.

and required Defense Counsel agree to review the materials and handle them accordingly.

Defense Counsel agreed to this process.³

3. During oral argument, Defense made, what the Commission considers to be an oral discovery motion for documentation to identify who seized the computers, who has handled the computers since they were taken from the Accused, where the computers were held/stored, and what was done to the computers in terms of data manipulation, i.e. creation of back-up copies, deletion of files, etc.⁴ As agreed upon during oral argument, the Prosecution subsequently filed Government's Notice of Attachments Regarding Chain of Custody Document for Laptop Computers Seized from Accused (AE 149C) in satisfaction of this discovery request.

4. RULING. The Defense Motion is **GRANTED** in part. The Prosecution will return the computers and associated media to Counsel for each Accused. Counsel will acknowledge receipt by signing for the laptops and related media. Defense will handle the computers and related media as if they contained classified information until such time as the Defense can review the materials, determine the appropriate classification of the information, and follow the information handling procedures of Amended Protective Order #1 and AE 018's Privileged Communications Order to the extent the materials or information contained therein is taken into the detention facility or discussed with the Accused.

So ORDERED this 22nd day of November, 2013.

//signed//
JAMES L. POHL
COL, JA, USA
Military Judge

³ *Id.* at 7156 -59.

⁴ *Id.* at 7160-62 and 7166.