

UNCLASSIFIED//FOR PUBLIC RELEASE
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 175F ORDER Government Motion For a Trial Scheduling Order and Notice of Status of Discovery 12 December 2014
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1. The Prosecution requested the Commission establish a Trial Scheduling Order, anticipating starting the trial on 22 September 2014, and providing as a basis for their motion “[t]his case is entering a new phase as the Prosecution’s anticipated discovery is nearly complete, and a firm trial scheduling order must now be set so the parties can properly plan for trial.”¹ Defense response challenged the status of discovery and “the imposition of its artificial and virtually impossible litigation schedule.”² In

¹ Government Motion For a Trial Scheduling Order and Notice of Status of discovery, filed 14 June 2013 (AE 175), *see* para 3.

² Defense Response To Government Motion for a Trial Scheduling Order and Notice of Status of Discovery, filed 12 July 2014 (AE 175A (AAA)) joined by Mr. bin ‘Attash’s Notice of Joinder To AE 175A (AAA) Government Motion for a Trial Scheduling Order and Notice of Status of Discovery, filed 16 July 2013 (AE 175A (WBA)) and Mr. Mohammad’s Notice of Joinder To Join and Adopt AE175A (AAA) Response to Government Motion for Trial Scheduling Order and Notice of Status of Discovery, filed 17 July 2013 (AE 175A (KSM)); Mr. Hawsawi’s Response to Government Motion for Trial Scheduling Order, filed 12 July 2013 (AE 175B (MAH)) joined by Mr. Mohammad’s Notice of Joinder To Join and Adopt AE175B (MAH) Response to Government Motion for Trial Scheduling Order, filed 16 July 2013 (AE 175B (KSM)), Notice of Joinder To Join and Adopt AE175B(MAH) Defense Response to Government Motion for Trial Scheduling Order, filed 17 July 2013(AE175B(RBS)) and Mr. bin ‘Attash’s Notice of Joinder To AE0175B (MAH) Government Motion for Trial Scheduling Order, filed 17 July 2013 (AE 175B (WBA)); and Mr. bin ‘Attash’s Response to Government Motion For a Trial Scheduling Order and Notice of Status of Discovery, filed 12 July 2013 (AE 175C (WBA)) (Ex Parte/Under Seal) joined by Mr. Mohammad’s Notice of Joinder To Join and Adopt AE175C (WBA) Response to Government Motion for Trial Scheduling Order and Notice of Status of Discovery, filed 16 July 2013 (AE 175C (KSM)).

April 2014, the Prosecution provided the Commission an update on the status of discovery.³

2. On 24 July 2014, concerned about inordinate delays attributable to issues impacting only the case against Mr. bin al Shibh, the Commission issued an Order⁴ severing the case of *United States v. Ramzi Bin al Shibh* from the cases of *United States v. Khalid Shaikh Mohammad*, *Walid Muhammad Salih Mubarak Bin 'Attash*, *Ali Abdul Aziz Ali*, and *Mustafa Ahmed Adam al Hawsawi*. The Prosecution, acknowledging the delay inherent in resolving the issues leading to the Severance Order, requested the Commission hold the severance in abeyance.⁵ The Prosecution motion was Granted⁶ thereby causing delay in these proceedings.

3. The Commission finds the request of the Prosecution to issue a meaningful Trial Schedule Order is not within the realm of possibility at this juncture given the delays involved with the Emergency Joint Defense Motion to Abate Proceedings and Inquire into Existence of Conflict of Interest Burdening Counsel's Representation of Accused,⁷ the Government Motion For R.M.C. 909 Hearing in April 2014 and Direct Inquiry by the Military Judge to Mr. bin al Shibh Regarding His Capacity to Stand Trial By Military Commission⁸ and the Emergency Defense Motion To Order the Cessation of External Use of Sounds and Vibrations to Interfere with Mr. Bin al Shibh's Confinement and with the

³ Government Notice of Status of Discovery, filed 14 April 2014 (AE 175E).

⁴ Severance Order, 24 July 2014 (AE 312).

⁵ Government Emergency Motion to Reconsider AE 312 Severance Order, filed 30 July 2014 (AE 312A).

⁶ Order, Government Emergency Motion to Reconsider AE 312 Severance Order, 13 August 2014 (AE 312C).

⁷ Emergency Joint Defense Motion to Abate Proceedings and Inquire into Existence of Conflict of Interest Burdening Counsel's Representation of Accused, filed 13 April 2014 (AE 292) *et seq.*

⁸ Government Motion For R.M.C. 909 Hearing in April 2014 and Direct Inquiry by the Military Judge to Mr. bin al Shibh Regarding His Capacity to Stand Trial By Military Commission, filed 4 February 2013 (AE 152J), *et. seq.*

Attorney-Client Relationship and to Allow Expert Inspection of his Cell,

Substructure/Foundation, Surrounding Areas of the Cell, and the Cell Control Room.⁹

4. The Prosecution request for a Trial Scheduling Order is **DENIED**.

So ORDERED this 12th day of December, 2014.

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

⁹ Emergency Defense Motion To Order the Cessation of External Use of Sounds and Vibrations to Interfere with Mr. Bin al Shihb's Confinement and with the Attorney-Client Relationship and to Allow Expert Inspection of his Cell, Substructure/Foundation, Surrounding Areas of the Cell, and the Cell Control Room, filed 3 April 2013 (AE 152)