

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 254JJ

INTERIM ORDER

Emergency Defense Motion to
Bar Regulations Substantially Burdening
Free Exercise of Religion and
Access to Counsel

07 January 2015

1. This order applies only in the cases of *United States v. Khalid Shaikh Mohammad, Walid Muhammad Salih Mubarak Bin 'Attash, Ramzi BinalShibh, Ali Abdul Aziz Ali and Mustafa Ahmed Adam al Hawsawi*.

2. On 17 October 2014, Mr. bin 'Attash filed a motion¹ alleging the use of female military personnel to physically move him, and in so doing, touching his body, violates his religious beliefs.² According to the motion, the use of female guards to move detainees is a new policy³ and one of the consequences has been the refusal of Mr. bin 'Attash, among others, to meet with their counsel since it might require physical contact with a woman who is not his wife or close relative. In conjunction with this motion Mr. bin 'Attash requested the Commission issue a temporary order "barring the use of female escorts to physically move [him] until such time that a full exposition of the issue can be had."⁴ Messrs. Hawsawi,⁵ bin al Shibh,⁶ and Mohammad⁷

¹ Emergency Defense Motion to Bar Regulations Substantially Burdening Free Exercise of Religion and Access to Counsel, filed 17 October 2014 (AE 254Y(WBA)).

² "The basis of Mr. bin 'Atash's objection to being touched by females to whom he is not related is his sincerely-held religious belief, as a devout Muslim, that his religion prohibits him from mixing or coming into contact with unrelated women due to the risk of sin;" *Id.* at para 3.

³ *Id.*, para 5H.

⁴ *Id.*, para 7.

⁵ Defense Supplement to AE 254Y, filed 7 November 2014 (AE 254Y (MAH Sup)).

specifically⁸ joined Mr. bin ‘Attash’s motion with Messrs. bin al Shibh and Mohammad⁹ also requesting the Commission issue a temporary order pending further resolution of the issues.

Messer’s bin ‘Attash, Aziz Ali, Hawsawi and bin al Shibh have requested oral argument on the issue of using female guards;¹⁰ Mr. Mohammad did not specifically join in this request.

3. The Prosecution filed a response asking this Commission deny the relief requested by the Accused in the underlying motion¹¹ but did not specifically address the request for a temporary order. The response suggests this Commission could decide this issue without oral argument but does reserve an opportunity to be heard if the Defense requests for argument are granted.

4. Mr. bin ‘Attash filed his reply to the Prosecution response on 12 December 2014¹² and Messrs. Mohammad, Aziz Ali and bin al Shibh filed a separate reply on 18 December 2014.¹³ All reiterated the previous requests for a temporary order barring the use of female guards until a full hearing can be held.¹⁴

5. The jurisdiction of this Commission is limited to criminal offenses as established by the Military Commissions Act of 2009.¹⁵ As such it lacks authority to engage civil issues pertaining to matters such as the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb *et se.* or other conditions of detention save as they impact on specific cases and issues properly before

⁶ Mr. Bin al Shibh’s Supplement to Emergency Defense Motion to Bar Regulations Substantially Burdening Free Exercise of Religion and Access to Counsel, filed 7 November 2014 (AE 254Y (RBS Sup)).

⁷ Mr. Mohammad’s Supplement To Emergency Defense Motion to Bar Regulations Substantially Burdening Free Exercise of Religion and Access to Counsel, filed 13 November 2014 (AE 254Y (Mohammad Sup)).

⁸ Mr. Aziz Ali is presumed to have joined the motion, *See* Rule for Military Commission 3.5.i and Messrs. Mohammad, al Baluchi, and Bin al Shibh’s Reply to (AE 254EE), filed 18 December 2014 (AE 254GG (KSM, AAA, RBS)).

⁹ AE 254Y (RBS Sup), para 3, and AE 254Y (KSM Sup), para 3.

¹⁰ AE 254Y (WBA), para. 7; AE 254Y (MAH Sup), para. 6; and AE 254Y (RBS), para.7.

¹¹ Government Response To Emergency Defense Motion to Bar Regulations Substantially Burdening Free Exercise of Religion and Access to Counsel, filed 5 December 2014 (AE 254EE (GOV)).

¹² Defense Reply to Government Response to Emergency Defense Motion to Bar Regulations Substantially Burdening Free Exercise of Religion and Access to Counsel, filed 12 December 2014 (AE 254GG (WBA)).

¹³ Messrs. Mohammad, al Baluchi, and Bin al Shibh’s Reply to (AE 254EE), filed 18 December 2014 (AE 254GG (KSM, AA, RBS))

¹⁴ AE 254GG (WBA), para 2.F, and AE254GG (KSM, AAA, RBS), para. 2..

¹⁵ Military Commissions Act of 2009, 10 U.S.C. §§948a, *et seq.*, (M.C.A.)

the Commission.¹⁶ The purportedly “new” policies pertaining to detainee movement are alleged to interfere with the ability of Defense Counsel to see the Accused and thereby prepare for trial. The Commission is aware Defense Counsel are not permitted to see the Accused at the detention site but rather at a facility specifically designated for client meetings thus necessitating the movement of the Accused.¹⁷

6. The Commission has before it the general issue of counsel access to their clients¹⁸ with this motion adding the allegation of a new encumbrance to effective communication between counsel and client. Mr. bin ‘Attash, joined by Mr. Aziz Ali, Mr. Hawsawi and Mr. bin al Shibh, have requested argument on this new allegation of an impediment to communications with their counsel as well as those previously placed before the Commission. As a remedy, mindful of the need to resolve the conflict issues concerning counsel,¹⁹ Mr. bin ‘Attash, Mr. bin al Shibh, and Mr. Mohammad requested the Commission issue a temporary stay to this “new” policy until such time as the Commission can address the issue.

7. To date the Commission has been mindful of religious and cultural differences within the parameters of its authority and responsibilities and at the same time respecting the need of the Detention Facility Commander to allocate resources and to preserve security with the means at hand.

8. Accordingly, the Commission finds to best serve the interests of all parties requires temporarily directing that female guards will only physically touch the Accused in cases of emergency and other urgent needs. Female guards participating in escorting during movements

¹⁶ E.g. Government Motion for a Written Communications Order, filed 27 April 2012 (AE 018 *et seq.*); Joint Defense Motion to Cease Psychological Dislocation Techniques and Denial of Detainees’ Right to Dress in own Clothing, filed 11 May 2012 (AE 038 *et seq.*)

¹⁷ Defense Supplement to AE254Y, filed 7 November 2014 (AE 254Y (MAH Sup)).

¹⁸ Emergency Defense Motion to Permit Attorney-Client Meeting 3 and 4 December 2013, filed 2 December 2013 (AE 254, *et seq.*)

¹⁹ 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 292Y *et seq.*).

to and from attorney-client meetings and Commission hearings will not engage in physical contact, absent exigent circumstances, until such time as this Commission can be provided evidence, and hears argument, on the need to use female guards to move the Accused.

9. The Defense motion for a temporary order is **GRANTED**, limiting the use of female guards to physically touch the Accused during movements to and from attorney-client meetings and Commission hearings, absent exigent circumstances, until such time as the Commission makes a final ruling on AE 254Y.

So ORDERED this 7th day of January 2015.

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