

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 324D

**AMENDED
DOCKETING ORDER**

26 January 2015

1. A hearing in this case will take place 9-21 February 2015, at the US Naval Station, Guantanamo Bay, Cuba. The hearing will begin at 0900 on 9 February 2015.
2. All accused must be present for the session on 9 February 2015.
3. Independent Defense Counsel appointed for Mr. bin al Shibh will be present.
4. The Commission will initially address **AE 312C**: Order, Government Emergency Motion To Reconsider AE 312 Severance Order.
 - a. The United States will be represented by detailed Trial Counsel.
 - b. Concerned about inordinate delays attributable to issues initiated by the Government¹ by virtue both of a request to determine Mr. bin al Shibh's competency to participate in his defense² and FBI inquiries concerning the Defense team for Mr. bin al Shibh³, the Commission directed severance. During argument, the Prosecution expressed their belief the conflict issues could be resolved by mid-Fall and, in a colloquy with the judge stated the Prosecution's

¹ The Commission recognizes the Prosecution was not aware of the FBI investigations, however as representative of the United States in these proceeding, they bear the burden imposed by the activities of any agency of the United States.

² Government Motion For Inquiry Into Ramzi Binalshibh's Mental Capacity To Stand Trial Pursuant to R.M.C. 706, filed 19 December 2013 (AE 152G).

³ Defense counsel for Mr. Mohammad, Mr. bin 'Attash, Mr. Aziz Ali, and Mr. Hawsawi were determined by the Commission to be free of any professional conflict stemming from the FBI inquiry. *See AMENDED ORDER*, Emergency Joint Defense Motion to Abate Proceedings and Inquire into Existence of Conflict of Interest Burdening Counsel's Representation of Accused, 16 December 2014 (AE 292QQ)

willingness to trade delay for maintenance of a joint trial.⁴ Based upon the willingness of the United States to accept delay the Commission, despite its concerns, issued an Order holding the severance in abeyance.⁵ After the August hearing, the Commission, mindful of its obligations in regard to national security, provided classified information that had come into its possession to the Special Review Team⁶ in accordance with the procedures set forth in the *Second Amended Protective Order #1*.⁷ Subsequent to that time the Special Review Team has provided periodic classified or *ex parte* updates⁸ to the Commission that indicate the issues raised in regard to conflict free representation have not been resolved.

c. The Commission will hear argument as to why it should not rescind the abatement order, thereby alieving the *status quo* and permitting progress on the remainder of the cases.

5. Contingent upon the outcome of argument on AE 312C, the United States will be represented by the Special Review Team for the portions of the hearing pertaining to argument on the following motions:

a. **AE 292RR (Gov):** Motion for Reconsideration of AE 292QQ (Order);

⁴ MJ [COL POHL]: So be it, it's more important to resolve those issues and keep a joint trial than it is to perhaps sever and move the other ones along more expeditiously. Is that what the government is saying?

MDTC [MR. TRIVETT]: That's our 100 percent unequivocal position.

See Unofficial/Unauthenticated Transcript of the Ramzi Bin al Shibh Motions Hearing Dated 8/11/2014 from 9:13 AM to 10:27 AM at 8052-8053.

⁵ Order, Government Emergency Motion to Reconsider AE 312 Severance Order, 13 August 2014 (AE 312C).

⁶ Order (Under Seal/Classified.), 27 August 2014 (AE 292XX),

⁷ Para. 9, *Second Amended Protective Order #1*, To Protect Against Disclosure of National Security Information, 16 December 2013 (AE 013DDD).

⁸ Submission by Special Review Team in Compliance with AE 292XX (Order), filed 12 September, 2014 (AE 292ZZ(GOV)); Second Submission by Special Review Team in Compliance with AE 292XX (Order), filed 29 September 2014 (AE 292EEE (GOV)); Third Submission by Special Review Team in Compliance with AE 292XX(Order), filed 7 October 2014 (AE 292GGG); Fourth Submission by Special Review Team in Compliance with AE 292XX (Order), filed 9 October 2014 (AE 292III (GOV)); Fifth Submission by Special Review Team in Compliance with AE 292XX (Order), filed 26 November 2014 (AE 292OOO); Sixth Submission by Special Review Team in Compliance with AE 292XX (Order), filed 5 December 2014 (AE 292RRR); Seventh Submission by Special Review Team in Compliance with AE 292XX (Order), filed 11 December 2014 (AE 292UUU); and Notice of Classified Ex Parte Filing by Special Review Team, filed 20 January 2015 (AE 292AAAA).

b. **AE 292VV (Mohammad)**: Defense Motion to Compel Discovery Related to

Interference with Defense Function by the United States; and,

c. **AE 292YY (Mohammad, al Baluchi, bin 'Atash, bin al Shibh)**: Defense Motion for Appropriate Relief- Disclosure by Military Judge Whether He has Acquired Information Relating to the Case from an Undisclosed Source and the Details of the Information.

6. Contingent upon the outcome of argument on AE 292, the United States will be represented by detailed Trial Counsel for the portions of the hearing pertaining to argument on the following motions:

a. **AE 152 (RBS)**: 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;

b. **AE 254KK**: Emergency Defense Motion to Bar Regulations Substantially Burdening Free Exercise of Religion and Access to Counsel (discovery and witnesses requests);

c. **AE 331**: Trial Conduct Order (paragraph 4)⁹;

d. **AE 008**: Defense Motion to Dismiss for Defective Referral;

e. **AE 031**: Joint Defense Motion to Dismiss for Unlawful Influence;

f. **AE 192 (MAH)**: Motion to Disqualify the Legal Advisor Due to Unlawful Interference with the Professional Judgment of the Chief Defense Counsel and Detailed Military Defense Counsel;

g. **AE 196 (MAH)**: Motion to Disqualify the Chief of Operations, Office of Military Commissions, Due to Unlawful Interference with the Professional Judgment of the Chief Defense Counsel and Detailed Learned Military Counsel;

h. **AE 254 (WBA)**: Emergency Defense Motion to Permit Attorney-Client Meetings 3 and 4 December 2013;

i. **AE 112 (WBA, RBS, AAA, MAH)**: Motion to Compel Discovery Related to White House and DOJ Consideration of the CIA Rendition, Detention and Interrogation Program;

⁹ Not later than 1 February 2015, the Government will review the *Second Amended* Protective Order #13 and proffer proposed changes, if necessary, to reflect the new policies. See Trial Conduct Order, 12 December 2014 (AE 331).

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j. **AE 114 (WBA, RBS, AAA, MAH):** Motion to Compel Discovery of Information Related to Buildings in Which the Accused or a Potential Witness Has Been Confined;

k. **AE 182 (Mohammad et al):** Defense Motion to Possess and Resume Use of a Microsoft-Enabled Laptop Computer;

l. **AE 183 (Mohammad et al) :** Joint Defense Motion for Telephonic Access for Effective Assistance of Counsel;

m. **AE 195 (AAA):** Joint Notice of Defense Motion to Compel Production of Communications Between Government and Filmmakers of Zero Dark Thirty;

n. **AE 206 (Mohammad):** Defense Motion to Cease Daily Intrusive Searches of Living Quarters and Person;

o. **AE 036E:** Government Motion Seeking to Clarify and Amend Military Commission Trial Conduct Order AE036D Regarding Government-Funded Production of Defense Witnesses and Use of Government Video Teleconference Equipment;

p. **AE 036G (AAA):** Defense Motion to Compel Discovery Related to Policies Governing Defense Witnesses;

q. **AE 036H (AAA):** Defense Motion to Compel Witness(es) Regarding Witness Production Expense;

r. **AE 214(MAH):** Defense Motion to Compel Mr. Hawsawi's Access to the Government of Saudi Arabia in Compliance with United States Law;

s. **AE 119 (MAH):** Defense Motion to Dismiss and to Compel a Status Determination pursuant to Article 5 of the Geneva Conventions;

t. **AE 164 (WBA):** Defense Motion to Stay all Review Under 10 U.S.C. § 949p-4 and to Declare 10 U.S.C. § 949p-4(c) and M.C.R.E. 505(f)(3) Unconstitutional and In Violation of UCMJ and Geneva Conventions;

u. **AE 018W:** Joint Defense Motion to Amend AE 018U Privileged Written Communications Order;

v. **AE 018BB:** Defense Motion to Compel Paper Discovery in Accordance with Privileged Written Communications Order;

w. **AE 018MM:** Defense Motion to Compel Reasonable Privilege Review Team Hours of Operation;

x. **AE 036E**: Government Motion Seeking to Clarify and Amend Military Commission Trial Conduct Order AE036D Regarding Government-Funded Production of Defense Witnesses and Use of Government Video Teleconference Equipment;

y. **AE 036G**: Defense Motion to Compel Discovery Related to Policies Governing Defense Witnesses;

z. **AE 036H**: Defense Motion to Compel Witness(es) Regarding Witness Production Expense

aa. **AE 161**: Defense Motion to Require the Government to Comply with MCRE 506 Regarding Redaction of Unclassified Discovery;

bb. **AE 190**: Defense Motion to Compel Production of Information Relating to Statements Made by Mr. al Baluchi or Potential Witness at a Detention Facility;

cc. **AE 191**: Defense Motion to Compel Production of Information; and

dd. **AE194**: Defense Motion to Compel Discovery of Mr. al Baluchi's Statements.

7. Counsel should be prepared to argue any other motion for which the briefing cycle has been completed. If either side believes other issues should be addressed, they may request the Commission to amend this order.

8. A Rule for Military Commission (R.M.C.) 802 Conference will be held at 1700 hours on Saturday, 7 February 2015, to discuss the sequence of argument and changes to the Docketing Order as they pertain to AE 312C. Predicated upon the outcome of argument on AE 312C, R.M.C. 802 Conferences, as to the other motions, will be held at dates and times to be determined.

9. If required, hearings under the provisions of Military Commission Rule of Evidence (M.C.R.E.) 505 (h) will be conducted at times to be determined.

10. The time which has transpired since arraignment until the date of the next session (9 February 2015) shall be considered excludable delay in accordance with R.M.C. 707(b) (4) (E) (i) and R.M.C. 707(c). I find that the interests of justice have been served by granting

continuances for the resolution of interlocutory and other pretrial issues, and that the resolution of these issues outweighs the interests of the public and the accused in a prompt trial.

So **ORDERED** this 26th day of January, 2015.

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