

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN ‘ATTASH, RAMZI BIN AL SHIBH, ALI ABDUL AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI</p>	<p>AE 426F</p> <p>RULING</p> <p>Emergency Defense Motion To Compel Appointment and Funding of a Confidential Expert Consultant or Postpone 30 May 2016 Pretrial Hearing</p> <p>12 August 2016</p>
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1. Mr. bin ‘Attash filed a motion¹ requesting this Commission “order the Convening Authority to appoint and fund [an industrial hygiene and toxicology expert] and allow Consultant sufficient time to determine whether Camp Justice is safe for occupancy. . .” Mr. bin ‘Attash also filed a motion² to compel discovery of information concerning Camp Justice habitability.

Mr. bin ‘Attash questions the Navy and Marine Corps Public Health Center (NMCPHC) determination that Camp Justice is safe, arguing that the NMCPHC report is flawed by “suspect data” or is simply “biased and misleading . . .” *Id.* Counsel for Mr. bin ‘Attash do not claim Camp Justice unsafe, simply that they are not assured Camp Justice is safe.

2. The Government responded³ that the NMCPHC has determined that Camp Justice is safe, and those findings are entitled to a presumption of regularity. The Government also opposed the

¹ AE 426 (WBA), Emergency Defense Motion to Compel Appointment and Funding of Confidential Expert Consultant, or Postpone 30 May 2016 Pretrial Hearings, filed 20 May 2016. *See also* AE 426 (WBA Sup), Emergency Defense Motion to Compel Appointment and Funding of Confidential Expert Consultant, or Postpone 30 May 2016 Pretrial Hearings, filed 27 May 2016.

² AE 426A (WBA), Defense Motion to Compel Discovery Defense Motion to Compel Production of Discovery: Information Regarding Camp Justice Habitability, filed 27 May 2016.

³ AE 426B (GOV), Government Response to Emergency Defense Motion to Compel Appointment and Funding of Confidential Expert Consultant, or Postpone 30 May 2016 Pretrial Hearings, filed 10 June 2016. *See also* Government Response to Defense Motion to Compel Production of Discovery: Information Regarding Camp Justice Habitability, filed 10 June 2016.

Defense motion to compel discovery⁴ and asserted the Commission has no jurisdiction to determine the “environmental habitability” of Camp Justice.

3. This Commission was established to try alien unprivileged enemy belligerents for violations of offenses triable by Military Commissions. 10 U.S.C. § 948b(a). Mr. bin ‘Attash has not presented any authority to support the notion that this Commission has authority to determine the habitability of Camp Justice. This Commission does not have jurisdiction to determine the habitability of the facilities at Camp Justice.

4. Even if this Commission had jurisdiction over the issue of habitability, the Commission would presume the Navy’s habitability report (AE 426 (WBA) and AE 426E (GOV)⁵-Summary of Preliminary Findings for the Phase I Public Health Risk Screening Risk Assessment) accurately determines that Camp Justice is safe to conduct the Commission’s proceedings, absent clear evidence of error. “The presumption of regularity supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties.” *Latif v. Obama*, 677 F.3d 1175 (D.C. Cir. 2012), quoting *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1117 (D.C. Cir. 2007). This presumption also applies to government-produced documents. *See Riggs Nat’l Corp. v. Commissioner of Internal Revenue*, 295 F.3d 16, 21 (D.C. Cir. 2002) (holding an “official tax receipt” of a foreign government “is entitled to a presumption of regularity.”) Mr. bin ‘Attash has presented no clear evidence of error.

⁴ See AE 426C (GOV), Government Response to Defense Motion to Compel Production of Discovery: Information Regarding Camp Justice Habitability, filed 10 June 2016.

⁵ AE 426E (GOV), Health Assessment Presentation (Under Seal), filed 21 July 2016.

5. Ruling:

a. The Defense Motion to Compel Appointment and Funding of Confidential Expert Consultant or Postpone 30 May 2016 Pretrial Hearings is **DENIED**.⁶

b. The Defense Motion to Compel Production of Discovery: Information Regarding Camp Justice Habitability is **DENIED**.

So **ORDERED** this 12th day of August, 2016.

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

⁶ The habitability of Camp Justice is also the subject of another motion by Mr. bin 'Attash (AE 095). In that motion Mr. bin 'Attash also claims that the NMCPHC failed to adequately assess the habitability of Camp Justice. The Commission denies that motion as beyond the Commission's jurisdiction.