

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 BIN AL SHIBH,  
ALI ABDUL AZIZ ALI,  
MUSTAFA AHMED ADAM AL  
HAWSAWI**

**AE 430D**

**ORDER**

Proposed Modifications to the  
Scheduling Order

**26 August 2016**

1. On 31 May 2016, the Commission issued a Scheduling Order for the Calendar Year (CY) 2017.<sup>1</sup> The Order directed any proposed modifications be submitted by 20 June 2016. The Order also required a “detailed justification” and “affirmative statement of conference” for any proposed modification.
2. On 17 June 2016, Mr. Ali (a.k.a. Mr. al Baluchi) responded<sup>2</sup> requesting the Commission: (1) reflect eight weeks of hearings instead of twelve; and (2) cancel the July 2017 hearings. Mr. Ali cited the out of court demands of the case, a moving date for the Office of Military Commissions Defense (OMCD) scheduled to occur in 2017, time necessary to process discovery production by the Government, the July-August summer vacation schedule, and general morale and well-being of Commission participants, as reasons to modify the proposed schedule.
3. On 20 June 2016, Mr. Hawsawi also filed a response.<sup>3</sup> Mr. Hawsawi requested the Commission reschedule the week of 16-20 October 2017 to either 28 August-1 September 2017 or 11-15 December 2017. To justify this request, Mr. Hawsawi cited a personal and familial

<sup>1</sup> AE 430, SCHEDULING ORDER, 31 May 2016.

<sup>2</sup> AE 430A (AAA), Mr. al Baluchi’s Response to Scheduling Order, filed 17 June 2016.

<sup>3</sup> AE 430B (MAH), Mr. al Hawsawi’s Response to AE 430, Scheduling Order, filed 20 June 2016.

commitment of Learned Counsel requiring international travel and significant financial expenditures.

4. The Government provided a consolidated response opposing the proposed modifications.<sup>4</sup>

Citing the potential for perpetual pre-trial litigation, the Government argued granting the motions would continue to delay the trial and not be in the interest of justice.

5. The Commission heard oral argument regarding AE 430 on 25 July 2016.<sup>5</sup>

a. Counsel for Mr. Ali, recognizing he had no legal objection,<sup>6</sup> explained that 12-weeks of hearings is a minimum of 91 days at Guantanamo Bay, Cuba, equating to 45% of a federal work year.<sup>7</sup> He argued the burden of litigating, motion writing, and investigating is great and an 8-week annual hearing schedule was more appropriate than a 12-week schedule.<sup>8</sup> Counsel for Mr. Ali asserted that conflicting summer vacation schedules from different areas of the country and three weeks of scheduled hearing in July and August can pose a problem for some staff's time with their children.<sup>9</sup>

b. Counsel for Mr. bin al Shibh made arguments highlighting an upcoming move the OMCD is scheduled to complete in 2017.<sup>10</sup> She pointed out that the Government does not need to make a similar move. Counsel estimated the move would take place in 2017 but did not know how long it would take and whether each team would be moving at the same time or not.

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<sup>4</sup> AE 430C (GOV), Government Response To Mr. Ali and Mr. Hawsawi's Response to AE 430, Scheduling Order, filed 30 June 2016.

<sup>5</sup> Unofficial/Unauthenticated Transcript of the *Khalid Sheik Mohammed et al* Motions Hearing Dated 25 July 2016 from 2:06 PM to 4:12 PM, at pp. 12946 – 12964.

<sup>6</sup> *Id.* at 12949.

<sup>7</sup> *Id.* at 12946.

<sup>8</sup> *Id.* at 12947.

<sup>9</sup> *Id.* at 12948-12949.

<sup>10</sup> *Id.* at 12952.

c. Counsel for Mr. Hawsawi stated he was not comfortable in open court talking about personal matters that may affect the schedule.<sup>11</sup> The Military Judge directed him to submit an *ex parte* filing explaining the personal commitment referenced in his filing. The Military Judge advised Counsel for Mr. Hawsawi, “I do need something more.”<sup>12</sup>

6. Nearly a month has passed since the Commission advised Mr. Hawsawi to file an *ex parte* explanation. To date the Commission has received no such filing.

7. The pace of litigation is in the sole discretion of the trial judge. Rules for Military Commission (R.M.C.) 707(b)(4)(E) and R.M.C. 801(a)(3). “[A] judge is ultimately responsible for the control of his or her court and the trial proceedings...[p]roper case management...is encompassed within that responsibility.” *United States v. Vargas*, 74 M.J. 1, 8 (C.A.A.F. 2014)(internal quotations and citations omitted).

8. While the Commission is sympathetic to the needs of all participants, given the large number of pending motions, the currently scheduled pace of hearings is appropriate, lest the trial be unduly delayed. This case has five Accused and a large number of participants. The Commission produces an annual scheduling order well in advance to give the parties an opportunity to arrange their schedules and propose modifications to the schedule. Absent a compelling reason, the Commission will not modify the proposed schedule. It is difficult, if not impossible, for all the parties to agree on modified schedule dates.

9. The Commission has been given no compelling justification to alter the proposed schedule at this time. When more concrete information about expected moves and prevention of work becomes available or Counsel believe the pace of litigation has come to a point where cancelling

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<sup>11</sup> *Id.* at 12960.

<sup>12</sup> *Id.*

or shortening a session would be more productive than completing that session, Counsel may raise appropriate motions at that time.

10. The motions to modify the Scheduling Order for CY 2017 are **DENIED**.

So **ORDERED** this 26<sup>th</sup> day of August, 2016.

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