

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 485C

ORDER

Mr. Ali's Emergency Motion
To Continue January 2017 Hearing Based
On Failure to Provide Adequate Lodging in
Accordance With Joint Travel Regulation

19 January 2017

1. Mr. Ali (a.k.a. al Baluchi) filed a motion asking the Commission to continue the hearings scheduled for 25 January to 3 February 2017 because the Office of the Convening Authority and the Office of the Chief Prosecutor “have failed to provide adequate housing in accordance with the Joint Travel Regulations.”¹ As the factual basis for the motion, Mr. Ali claims that on 10 January 2017, a front desk supervisor at the Navy Gateway Inns and Suites (NGIS) abruptly cancelled lodging reservations of Military Commission Defense Organization and other Office of Military Commission (OMC) personnel.² In an email, the NGIS Supervisor stated:

We are no longer reserving OMC rooms due to limited availability. There is a need for rooms for essential personnel that have no other lodging options, so due to mission assignments please be advised that All Current OMC reservations will be cancelled by Friday January 13, 2017. OMC guests are advised to use designated housing facilities by making arrangements with your POC on island or by contacting Mr. ██████████ OMC director for any lodging needs. However, we will accept OMC on a “Walk-In basis” on the day of arrival” (sic) if our availability permits.³

Counsel for Mr. Ali asserted Joint Travel Regulation Chapter 2, Part H, Section 2, Paragraph 2575 prohibits the Government from housing civilian employees on temporary duty in “free-of charge

¹ AE 485 (AAA), Mr. al Baluchi's Emergency Motion to Continue January 2017 Hearing Based On Failure To Provide Adequate Lodging in Accordance With Joint Travel Regulations, filed 12 January 2017 at 1.

² *Id.* Attach. C.

³ *Id.* at 2.

government quarters” such as Containerized Housing Units (CHUs or “Cuzcos”) provided by OMC as housing at Guantanamo Bay absent certain particularized findings by the head of the agency.⁴

2. The Prosecution responded⁵ that the cancellations were at the direction of the Commander, Naval Station Guantanamo Bay (NSGB) to “effectuate a change of policy in how far in advance individuals would be permitted to make lodging reservations...to allow for housing of various individuals who travel to NSGB and who are needed to perform various repairs/upgrades to the infrastructure” of NSGB and other “vital missions.”⁶ However, the issue is now moot because the canceled reservations have been reinstated.⁷ The Prosecution added:

[e]ven in the event a lodging reservation has not been properly reinstated by the Navy Gateway Inns and Suites (NGIS) for a Department of Defense (DoD) civilian employee, or if reservations have been double-booked in the interim between the cancellation and reinstatement of the reservations, or if pressing mission requirements at NSGB require a reservation be terminated to accommodate that mission, such events do not provide a basis for continuing this Commission’s proceedings.⁸

Finally, the Prosecution asserted that nothing prevents Department of Defense (DoD) civilians from staying in the Cuzcos, and “there is no legal entitlement to specific housing of one’s choice while on board the Naval Station. . . .”⁹

3. In reliance on the Prosecution’s assertion that the reservations have been reinstated and the issue is moot, the Commission will deny Mr. Ali’s motion to continue the January/February 2017 Commission hearings.

4. However, Mr. Ali’s motion does raise valid concerns. The Government has characterized the offenses before the Commission as “the crime of the century,”¹⁰ and the Chief Prosecutor has

⁴ *Id.* at 3 and Attach. B.

⁵ AE 458B (GOV), Government Response To Mr. Ali’s Emergency Motion to Continue January 2017 Hearing Based On Failure to Provide Adequate Lodging in Accordance With Joint Travel Regulation, filed 17 January 2017.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ AE 485B (GOV) at 3.

⁹ AE 485B (GOV) at 4.

stated, “This case presents higher stakes and greater legal and logistical challenges, than possibly, any other trial in U.S. history.”¹¹ The Government chose to prosecute this case and other Commission cases at NSGB. That choice carries with it the responsibility to provide adequate logistical support for the Commissions, to include housing for all trial participants sufficient for them to professionally execute their duties. On 10 January 2017, without providing any convincing rationale for altering a long-standing housing reservation practice, the Government canceled lodging reservations for OMC participants from January – December 2017.¹² No comparable alternative housing was offered. No prior notice was given to the Commission or the parties.¹³

5. Although at first blush this might appear to be a trivial issue to those observing the Commission process from the outside, in the view of the Commission, it is yet another example of how Commission proceedings are slowed or halted by external forces making decisions without a full appreciation of the consequences those decisions have on the Commissions. Such ad hoc decision-making goes to the very integrity of the trial process. One issue always associated with litigation is the need to maintain an appropriate degree of distinction and separation between the various parties involved to mitigate risk of actual or apparent conflict, disclosure of privileged information, and similar concerns. These issues are only accentuated in the context of complex, high-profile capital litigation – a paradigm epitomized by this case. The Commission understands that lay persons may not be fully familiar with these concerns, but this does not alleviate the responsibility to foresee such potential risks and take appropriate measures to forestall them. No court, military or civilian, would unquestioningly defer to the government’s decisions regarding logistical support when those decisions potentially impact the litigation process.

¹⁰ www.pbs.org/newshour/bb/law-july-dec09-holder2_11-13/

¹¹ <http://911families.org/a-message-from-chief-prosecutor-of-military-commissions-mark-martins/>

¹² See AE 485 (AAA), Attach. C.

¹³ The process of this sudden change is reminiscent of Change 1 to the Regulation for Trial by Military Commission (2011), Chapter 6, Military Judges, 6-2. Detail of Military Judges, dated 7 January 2015, which was also a bolt out of the blue, rendered with no notice, no circulation, and no discussion.

6. The Commission recognizes that individuals sometimes must live in austere conditions to support the mission. But that is not the case here. The Commission is convened at NSGB, an active and relatively modern U.S. Navy base in existence since 1903.¹⁴ The Commission is not convened in Iraq, Afghanistan, or the Horn of Africa where the U.S. presence is truly expeditionary. The civilian and military professionals who appear in court require adequate lodging in which to rest and prepare their cases.

7. To have such tangential issues slow or delay the process is unacceptable. Permitting decisions concerning logistical support to rest in a myriad of offices and officials outside of OMC is also unacceptable. Similarly, the absence of a published logistical support policy results in a lack of clear guidance to the command, OMC, and the Commission going forward.¹⁵ The Government must have a unity of effort on all aspects of this case, including providing logistical support to all trial participants. While issuing no final ruling on the adequacy of logistical support to the Commissions at this time, the Commission has placed this issue on the docket for the upcoming session (*see* AE 479E), after which further action will be ordered.

8. **Ruling:** Mr. Ali's motion is **DENIED**.

So **ORDERED** this 19th day of January, 2017.

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

¹⁴ See Jonathan M. Hansen, Guantanamo: An American History (2011) at 153.

¹⁵ This is particularly troublesome given the rotation of commanders who have limited familiarity with the Commissions and no institutional memory regarding past logistical support practices.