

UNCLASSIFIED // FOR PUBLIC RELEASE
MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA v. MAJID SHOUKAT KHAN	AE 016E ORDER Civilian Defense Counsel Security Clearance Issue and Government Request for a Scheduling Order 19 August 2015
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1. The Prosecution in AE 016 requested the Commission publish a scheduling order to move the case to trial. The Defense response (AE 016A) indicated they could not provide a response to the proposed scheduling order as Joint Task Force – Guantanamo (JTF-GTMO), the guard force operating the detention facility, was not approving visit requests. During the 4 August 2015, telephonic Rule for Military Commission (R.M.C.) 802 conference Civilian Defense Counsel for Mr. Khan indicated members of the Defense Team were unable to confer with their client as JTF-GTMO did not have or recognize their security clearances. The Commission requested the Prosecution “clarify and find a solution to the JTF-GTMO refusal” (AE 016D at 1 quoting Aug. 5, 2015 Email from Staff Director, Trial Judiciary to Counsel re: US v. Khan - R.M.C. 802 Conference – Notes) to allow Mr. J. Wells Dixon and Ms. Katya Jestin, the Accused’s civilian defense counsel, to meet with the Accused and report back to the Commission. The Prosecution filed AE 016C confirming JTF-GTMO did not approve visit requests because some members of the Defense Team “did not appear on [JTF-GTMO’s] list of people with proper security clearances for access to their client.” (AE 016C at 1). The Defense filed a response (AE 016D) to the Prosecution’s report (AE 016C) which in pertinent part, confirmed the

Defense Team had a JTF-GTMO approved client visit scheduled for the week of 21 September 2015, which they intended to keep, assuming clearance issues are resolved.

2. The Commission notes neither the Prosecution nor the Defense filings at AE 016C and AE 016D inform the Commission of a resolution to the Defense Team's security clearance issues. The Commission will not assume the role of intermediary between the Defense and JTF-GTMO concerning scheduling client visits. The Commission infers from the pleadings filed to date that JTF-GTMO has an established process or policy for Defense Counsel to schedule client visits. While this may cause inconvenience at times, the Defense is encouraged to work within the system established by JTF-GTMO and, if exceptions are necessary, call upon the Prosecution's good offices to assist in working through out-of-time / exception to policy visit requests.

3. The Commission orders:

a. Not later than 26 August 2015, the Office of the Chief Prosecutor; Office of the Chief Defense Counsel; Office of Military Commissions; and, Washington Headquarters Services, Office of Special Security will ensure Mr. J. Wells Dixon and Ms. Katya Jestin's security clearances are up-to-date and reflected on JTF-GTMO's "list of people with proper security clearances to access to their client." (AE 016C at 1).

b. Mr. J. Wells Dixon and Ms. Katya Jestin will promptly cooperate in this process to the extent information from and about them must be submitted in the normal course of business.

c. Not later than 31 August 2015, the Prosecution and Defense will file a joint notice informing the Commission of the successful completion of the task in sub paragraph a above or explaining why the task is not complete and when it will be complete.

d. Not later than 30 September 2015, the Defense, having met with the Accused during the week of 21 September 2015, will file a supplemental response (*see* Military Commissions Trial Judiciary Rule of Court (RC) 3.5.e. (5 May 2014)) to the Prosecution's request for a Scheduling Order, which will include milestones and dates leading to a sentencing hearing in this case consistent with the terms of the pre-trial agreement (AE 012).

e. The Prosecution, if it desires, may file a reply to the supplemental response in accordance with RC 3.7.e. The Commission will issue a scheduling order thereafter.

So ORDERED this 19th day of August, 2015.

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JAMES L. POHL
COL, JA, USA
Military Judge