



UNITED STATES
COURT OF MILITARY COMMISSION REVIEW

UNITED STATES,)	ORDER
)	
Appellant)	ORAL ARGUMENT
)	
v.)	
)	
ABD AL RAHIM HUSSAYN)	
MUHAMMAD AL-NASHIRI,)	CMCR Case No. 14-001
)	
Appellee)	October 16, 2014

BEFORE:

KRAUSS, PRESIDING Judge
SILLIMAN, WEBER, Judges

On October 15, 2014, Appellant requested oral argument. On October 16, 2014, Appellee replied and did not object to oral argument.

Therefore, it is hereby

ORDERED that oral argument will be heard at 10:00 a.m. Eastern Time on November 13, 2014, in Courtroom 201, United States Court of Appeals for the Federal Circuit, 717 Madison Place, NW, Washington, DC.

FOR THE COURT:


Mark Harvey
Clerk of Court, U.S. Court of Military
Commission Review

Copy to:
Convening Authority, OMC
Judges Listed
Appellate Counsel
Clerk of Court, U.S. Court of Appeals
for the Federal Circuit

<p>UNITED STATES OF AMERICA</p> <p style="text-align: center;"><i>Appellant,</i></p> <p style="text-align: center;">v.</p> <p>ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI</p> <p style="text-align: center;"><i>Appellee.</i></p>	<p>) IN THE UNITED STATES COURT OF</p> <p>) MILITARY COMMISSION REVIEW</p> <p>) MOTION FOR ORAL ARGUMENT</p> <p>)</p> <p>) U.S.C.M.C.R. Case No. 14-001</p> <p>)</p> <p>) Arraigned at Guantanamo Bay, Cuba</p> <p>) on November 9, 2011</p> <p>)</p> <p>) Before a Military Commission</p> <p>) convened by Vice Admiral (ret.)</p> <p>) Bruce E. MacDonald, USN</p> <p>)</p> <p>) Presiding Military Judge</p> <p>) Colonel Vance H. Spath, USAF</p> <p>)</p> <p>) DATE: October 15, 2014</p>
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**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES COURT OF MILITARY COMMISSION REVIEW**

COMES NOW Appellant United States of America and, pursuant to Rule 17(a) of this Court’s Rules of Practice, respectfully moves this Honorable Court to hear oral argument on the issues presented in the Brief on Behalf of Appellant. Appellant Br. at 1-2. Appellant respectfully requests that the Court hold oral argument on **October 24, 2014**—one week after Appellant files its Reply, if the Court grants Appellant leave to file the Reply. Hearing oral argument on these issues will aid the Court in full and fair resolution of the issues presented.

WHEREFORE, Appellant moves the Court to grant the requested relief.

Respectfully submitted,

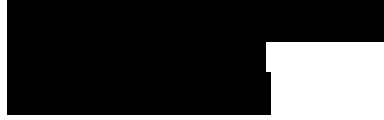
//s//

MARK S. MARTINS
Brigadier General, U.S. Army
Chief Prosecutor

DANIELLE S. TARIN
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Appellate Counsel for the United States

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent by electronic mail to defense counsel for Abd Al Rahim Hussayn Muhammad Al Nashiri on October 15, 2014.

//s//

DANIELLE S. TARIN
Appellate Counsel for the United States

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IN THE UNITED STATES COURT OF MILITARY COMMISSION REVIEW

UNITED STATES)	
)	RESPONSE TO THE APPELLANT’S
<i>Appellant,</i>)	REQUEST FOR ORAL ARGUMENT
)	
v.)	
)	Before Panel No. 2
ABD AL RAHIM HUSSAYN)	
MUHAMMAD AL NASHIRI,)	CMCR Case No. 14-001
)	
<i>Appellee.</i>)	October 16, 2014
)	
)	

**TO THE HONORABLE, THE JUDGES OF THE COURT OF MILITARY
COMMISSION REVIEW**

RESPONSE TO THE APPELLANT’S REQUEST FOR ORAL ARGUMENT

The Appellee, Abd. Rahim al-Nashiri joins the Appellant’s request for oral argument, but opposes the date proposed by the Appellant because neither of the Appellee’s counsel, Mr. Richard Kammen or Commander Brian Mizer, are available on 24 October 2014, as more fully described below. Appellee proposes the dates of 11, 12 or 13 November 2014 for oral argument so that both of Appellee’s counsel in this case may attend.

In the alternative, Mr Kammen can be available on 31 October 2014, but will be deprived of the assistance of CDR Mizer, who argued these issues below. The Appellee would suggest one half hour per side.

Richard Kammen's Availability

Mr. Kammen, who is both lead and learned counsel, has numerous prior obligations many of which are related to his representation of Mr. Nashiri. These obligations are such that they cannot be easily rescheduled. Indeed, if forced to reschedule the defense could lose access to information that could be quite helpful to Mr. Al-Nashiri's defense. It would be an unfair interference with Mr. Nashiri's right to counsel to force counsel to reschedule prior obligations in favor of a matter that is being unnecessarily rushed.

The schedule contemplated by the prosecution would require the defense to read, digest, and, possibly file a surreply to a brief, of unknown length and complexity, and prepare for oral argument in less than a week. Given the lack of resources under which the defense labors, the holding the argument on October 24th will violate the defendant's rights guaranteed by the Fifth, Sixth and Eighth amendments to the Constitution of the United States of America, the Military Commission Act of 2009, the Detainee Treatment Act of 2005, treaty obligations of the United States, and fundamental fairness.

Mr. Kammen will only be available for argument on the 31 October or the week of 10 November 2014 except November 14.

Commander Brian Mizer's Availability

CDR Mizer is presently a civilian attorney employed by the U.S. Air Force Appellate Defense Division. This is his full time employment. He was been working on the Nashiri matter, including this appeal, during his spare time and after his work hours in his capacity as a Navy reservist. On 24 October 2014, he will be at the United States Disciplinary Barracks, Fort Leavenworth, Kansas He is not available to participate in oral

argument until the week of 10 November 2014 as he will be in the process of remobilizing into the Navy on 31 October 2014, a fact known to the Appellant in this case since February 2014.

As Commander Mizer argued these matters below, it is preferable that he be available to participate in the argument as he is more familiar with the very complex issues and the authorities supporting the defense's position. Precluding Commander Mizer's participation in the argument would constitute an impermissible severance of the attorney-client relationship. *United States v. Hutchins*, 69 M.J. 282, 293 (C.A.A.F. 2011).

Accordingly, the appellee would propose that this argument be held on either 11, 12, or 13 November . This will allow Commander Mizer to return to active duty, prepare for, and participate in the argument .



BRIAN L. MIZER
CDR, JAGC, USN
Assistant Detailed Defense Counsel

Richard Kammen
Richard Kammen
Kammen & Moudy
DOD Appointed Learned Counsel