

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA v. ABD AL HADI AL-IRAQI	AE 005E Government Motion For Additional Access to Open Proceedings of this Military Commission via Closed- Circuit Television Transmission to Remote Location 21 August 2014
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1. Timeliness

This Motion is timely filed pursuant to Military Commissions Trial Judiciary Rule of Court (“RC.”) 3.7.

2. Relief Requested

The Government respectfully requests that the Military Judge issue the attached Order for Public Access (Attachment B)¹, authorizing the transmission of all open proceedings in the above captioned Military Commission via closed-circuit television (CCTV) to remote viewing sites in accordance with Rule for Military Commission (“R.M.C.”) 806(c).

The Government respectfully requests that the Military Judge decide this Motion and enter the attached Proposed Order before the next hearing scheduled for 15 September 2014. The defense does not object to the requested relief.

3. Overview

The Military Judge has authorized CCTV transmission of military commission proceedings when courtroom facilities are inadequate to accommodate a reasonable number of spectators. *See* AE 005A (interim order authorizing CCTV site at Ft. Meade, Maryland).

¹ On 8 August 2014, the Government filed an unopposed motion requesting transmission via CCTV to Fort Devens, Massachusetts (AE005D). Attachment B to the current motion is a proposed order covering both government motions AE005D and AE005E.

The courtroom facilities at U.S. Naval Station Guantanamo Bay, Cuba, (Naval Station GTMO) are inadequate to accommodate a reasonable number of spectators in this case because of the courtroom's geographically remote location and the limited public seating available. The Department of Defense (DoD) has established remote viewing sites capable of receiving CCTV transmission of the commission proceedings. The Government respectfully requests that the Military Judge authorize an additional CCTV site, at Bulkeley Hall, Naval Station GTMO, for proceedings in this military commission, which would facilitate public access to the trial of the Accused. *See* R.M.C. 806(c) (the military judge may permit closed-circuit video transmission of the proceedings to permit viewing by spectators).

4. Burden of proof

As the moving party, the Government must demonstrate by a preponderance of the evidence that the requested relief is warranted. R.M.C. 905(c)(1)-(2).

5. Facts

The Accused is charged at a military commission with one Specification of Denying Quarter, one Specification of Attacking Protected Property, three Specifications of Using Treachery or Perfidy, one Specification of Attempted Use of Treachery or Perfidy, and one Specification of Conspiracy to Commit Offenses Triable by Military Commission. *See* Referred Charge Sheet.

The military commission is next scheduled to convene at the Expeditionary Legal Center (ELC), Courtroom 2, Naval Station GTMO, for pretrial proceedings on 15 September 2014. *See* AE 015.

Spectator access, including access by the media, general public, military commission personnel, and family members of victims and surviving victims, is limited due to the small size of the public viewing gallery located at the ELC. Furthermore, access to GTMO is limited due to military necessity.

Due to the serious nature of the crimes alleged and the historic nature of military commissions, there is significant public interest in the proceedings, including from the media, the public, and the family members of victims and surviving victims.

The number of persons and entities interested in the proceedings exceeds the capacity of the gallery at the ELC to permit such spectators.

In addition to the site previously authorized at Ft. Meade, Maryland, the DoD has established a remote public viewing site at Bulkeley Hall, Naval Station GTMO, to accommodate additional members of the public that may be interested in the proceedings. Bulkeley Hall is distinct from other remote CCTV sites at Naval Station GTMO that are used for official viewing by Military Commission participants.

6. Law and Argument

I. The Commission Should Authorize an Additional Closed-Circuit Television Transmission of All Open Commission Proceedings

Military commission proceedings must be held publicly unless a commission finds that closing a proceeding is necessary either to “protect information the disclosure of which could reasonably be expected to cause damage to the national security” or to “ensure the physical safety of individuals.” 10 U.S.C. 949d(c)(2)(A)-(B); R.M.C. 806(a). Consistent with this mandate, the “military judge may, as a matter of discretion permit contemporaneous closed-circuit video or audio transmission to permit viewing or hearing . . . by spectators when courtroom facilities are inadequate to accommodate a reasonable number of spectators.” R.M.C. 806(c).

The facilities of Courtroom 2 at the ELC at Naval Station GTMO are inadequate to accommodate the large number of spectators, including survivors, victim family members, and the media who wish to attend the proceedings. Accordingly, to more fully implement the statutory and regulatory mandate of open and public proceedings, the Government respectfully requests that the Military Judge authorize the transmission of open commission proceedings to an additional remote viewing site at Bulkeley Hall, Naval Station GTMO via contemporaneous

closed-circuit video and audio transmission. This facility is capable of receiving CCTV transmission of the commission proceedings.

II. The Commission Should Issue a Public Access Order Setting Forth the Procedures and Rules Relating to the Remote Viewing Sites

The Commission should enter the attached proposed Order for Public Access (i) ordering that the remote viewing site is an extension of the courtroom, (ii) controlling conduct at the site, and (iii) controlling access to the site. Similar measures are used in federal district courts where remote viewing sites are set up to accommodate public access to the trial of an accused. *See, United States v. Moussaoui*, No. 01 CR 455, Docket No. 1638, Trial Conduct Order #2, CCTV Locations (E.D.V.A. March 1, 2006).

Transmitting the proceedings to a remote viewing location does not deprive the Commission of the authority and obligation to regulate access to the proceedings and the conduct of spectators, consistent with the M.C.A. Similar to a court-martial, the Commission is obligated to ensure order and decorum during the proceedings. *See* R.M.C. 801(a)(2) (“Military commissions should be conducted in an atmosphere that is conducive to calm and detached deliberation and determination of the issues presented and that reflects the seriousness of the proceedings.”); R.M.C. 801(a)(2) Discussion. To maintain order and decorum, the Commission may control access to the proceedings by excluding spectators where necessary. *See* R.M.C. 806(b)(1). The Commission’s obligation to maintain order and decorum is consistent with federal court practice:

Just as a government may impose reasonable time, place, and manner restrictions upon the use of its streets in the interest of such objectives as the free flow of traffic, so may a trial judge, in the interest of the fair administration of justice, impose reasonable limitations on access to a trial. . . . It is far more important that trials be conducted in a quiet and orderly setting than it is to preserve that atmosphere on city streets. Moreover, since courtrooms have limited capacity, there may be occasions when not every person who wishes to attend can be accommodated. In such situations, reasonable restrictions on general access are traditionally imposed, including preferential seating for media representatives.

Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 581, n.18 (1980) (citations omitted); *see also United States v. Short*, 41 M.J. 42, 44 (C.M.A. 1994) (concluding that Rule for Court-

Martial 806(b) permits a military judge to exclude specific persons from the courtroom “if the judge ha[s] reason to believe that persons are disorderly and may continue to be so”).

In *Moussaoui*, the court issued two orders authorizing transmission of the judicial proceedings by CCTV to remote viewing locations. See *Moussaoui*, Docket No. 1500, Trial Conduct Order #1; *Moussaoui*, Docket No. 1638, Trial Conduct Order #2, CCTV Locations. The court specifically found “all CCTV sites will be deemed extensions of [the courtroom]” and that “the rules of conduct that apply to [the courtroom] will apply to all CCTV locations.” *Moussaoui*, Docket No. 1638, Trial Conduct Order #2 CCTV Locations, p. 1. The court prohibited the recording or transmitting of the proceedings by the public. *Moussaoui*, Docket No. 1500, Trial Conduct Order # 1, p. 4; *Moussaoui*, Docket No. 1638, Trial Conduct Order #2 CCTV Locations, pp. 1-2. The court further ordered that violations of its rules could result in the revocation of that person’s credentials to access the remote viewing locations and possible criminal prosecution. *Moussaoui*, Docket No. 1500, Trial Conduct Order #1 at 5; *Moussaoui*, Docket No. 1638, Trial Conduct Order #2 CCTV Locations at 2.

To ensure sufficient access by persons involved in the litigation, the *Moussaoui* court reserved seats for “staff connected to counsel.” *Moussaoui*, Docket No. 1500, Trial Conduct Order #1 at 2-3. Likewise to facilitate media access, the court also reserved a limited number of seats for members of the media. *Id.* To ensure greater public access to these proceedings, the Commission should authorize additional transmission of all open commission proceedings to the remote viewing location at Bulkeley Hall, Naval Station GTMO. Similar to federal court practice, the Commission should enter the attached Order for Public Access holding the remote viewing sites to be extensions of the courtroom, controlling conduct at the sites, and controlling access to the sites.

7. Oral Argument

The Government does not request oral argument.

ATTACHMENT A

Filed with TJ
21 August 2014

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ATTACHMENT B

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21 August 2014

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**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA

v.

ABD AL HADI AL-IRAQI

AE 005_

ORDER

For Additional Public Access to Open
Proceedings of this Military Commission
via Closed-Circuit Television Transmission
to Remote Location

_____ 2014

1. Upon consideration of the Government's unopposed motions (AE005D) and (AE005E) for Additional Access to Open Proceedings of this Military Commission via Closed-Circuit Television Transmission to Remote Location, and pursuant to the Commission's authority under the Military Commissions Act of 2009, 10 U.S.C. § 948a, et seq., Rule for Military Commissions 806, and Military Commissions Trial Judiciary Rule of Court 6 (5 May 2014);

2. The Commission makes the following findings:

a. Spectator access, is limited by the small size of the gallery of Courtroom 2 at the Expeditionary Legal Center (ELC) at U.S. Naval Station Guantanamo Bay, Cuba (Naval Station GTMO);

b. Spectator access is further limited by the logistical difficulties and security limitations involved in traveling to the ELC at Naval Station GTMO;

c. Due to the serious nature of the crimes alleged and the historic nature of military commissions, there is significant public interest in the Commission proceedings;

d. The Department of Defense (DoD) has established facilities for the viewing of the proceedings by family members of victims and surviving victims, at Fort Devens, Massachusetts, using closed circuit television (CCTV);

e. The Department of Defense (DoD) has established facilities for the viewing of the proceedings by the general public, at Bulkeley Hall, Naval Station GTMO using closed circuit television (CCTV);

f. Both of these sites have been established in accordance with standard operating procedures to help encourage open reporting, to promote transparency, and to prevent the unauthorized broadcast of the commission proceedings;

3. The Commission ORDERS the following:

a. The Government request that AE 005A is hereby made a permanent order of the Commission is GRANTED;

b. The Government request to transmit all open proceedings by CCTV to Fort Devens (AE005D) and Bulkeley Hall (AE 005E) is GRANTED;

c. The open proceedings will be transmitted by CCTV to the continental United States at Fort Devens, MA, to permit the family members of victims and surviving victims are who are eligible to view the proceedings;

d. The open proceedings will be transmitted by CCTV to Bulkeley Hall, Naval Station GTMO, to permit the general public to view the proceedings;

e. The additional remote viewing locations will be deemed an extension of Courtroom 2, ELC, Naval Station GTMO (Courtroom 2). The proceedings in Courtroom 2 will dictate the schedule of all remote viewing locations. Spectators at the remote viewing locations will conduct themselves in accordance with the rules and procedures governing the ELC and with the decorum expected of spectators at any judicial proceeding;

f. Video recording, audio recording, radio or television broadcasting, the taking of photographs, or the transmission of audio or video directly are prohibited at all remote viewing sites during the proceedings. Any violation of this Order will result in the recording, broadcasting, or photography device being seized and not returned until the end of the day. Any recording of the proceedings will be permanently removed from the device in accordance with

procedures issued by the Office of the Convening Authority. A repeat violation will result in suspension or revocation of the attendee's access to the remote viewing location;

g. Technical difficulties with the transmission of the proceedings to any CCTV locations shall be brought to the attention the Commission as soon as practicable; the Commission has sole discretion to determine whether the proceedings should be recessed to provide an opportunity to restore the transmission;

h. Notice of the transmission will be placed on the record by the Government at the start of each individual session that is to be the subject of contemporaneous video or audio transmission.

SO ORDERED this ___ date of _____, 2014.

J.K. WAITS
CAPT, JAGC, USN
Military Judge

ATTACHMENT C

Filed with TJ
21 August 2014

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**Rules for Public/Observers
of Military Commissions via CCTV**

1. Rules - The United States Department of Defense (DoD), through the Office of Military Commissions (OMC) is hosting members of the general public and other observers for the purpose of observing military commission proceedings transmitted via a Closed Circuit Television (CCTV) feed from Guantanamo Bay, Cuba to Commissions approved remote locations. The following Rules have been established in order to facilitate this effort. Subject to the orders of the Military Judge, the CCTV site shall be deemed an extension of the courtroom at Guantanamo Bay, Cuba.

Rules of conduct are established to ensure that, consistent with the orders of the Military Judge and Manual for Military Commissions, proceedings are not recorded or re-transmitted, appropriate courtroom decorum is observed, and security at remote locations is not compromised. They are also designed to protect the security of various commission participants by preserving the anonymity of certain participants, subject to the Military Judge's instructions. Additionally, the Rules outline the nature and limitations of the observation of the military commission proceedings and take into consideration the restrictions of logistics, security and equitable access to the commissions by other interested parties.

Failure to comply with the Military Judge's instructions, or these Rules, could result in permanent expulsion from the CCTV viewing area, removal from the installation, and/or a prohibition on observing future military commission proceedings.

By entry on to the premises of the host military installation site for the CCTV transmission, the observer agrees to the following:

a. To be subject to the instructions of the Military Judge and courtroom or CCTV etiquette rules. Failure to comply with such instructions could result in curtailing of all further participation by that observer or, potentially, the observer's sponsoring organization.

b. Not to bring in to the CCTV site any electronic devices, including cell phones, pagers, cameras, video cameras, tape recorders, computers, and any other electronic devices capable of audio and/or video recording.

c. Not to record or document by audio, video, photography or other electronic means, the proceedings or their participants from the CCTV viewing area. Writing materials- e.g. paper, notepads, pens, pencils- and copies of publicly available case filings are permitted.

d. To allow OMC or court security to seize any electronic devices found in the CCTV viewing area in violation of these Rules and inspect the files contained therein, and to allow deletion of any unauthorized audio or video recordings, sketches or likenesses, or photography made of the proceedings. After the unauthorized material is deleted, the item will be returned.

e. Not to carry on to the installation or into the CCTV viewing area firearms or weapons, explosives, flammable liquids, caustic materials, or other hazardous materials.

f. To be respectful of the other observers of the proceedings and not to be disruptive, consistent with the orders of the Military Judge.

g. To abide by any orders imposed by the Military Judge.

2. Observation as Sole Purpose - Observers are at remote locations, for the sole purpose of observing the commission proceedings. Observers agree that OMC is under no obligation to facilitate their access to the press or other parts of the base unrelated to viewing the commission proceedings.

3. Agreement to Abide - By entering on to the premises of the host military installation site for the CCTV transmission, the observer agrees to abide by these Rules. Failure to agree and follow these Rules and/or comply with the instructions of the Military Judge may result in permanent expulsion from the viewing area, removal from the installation, and a prohibition on observing future military commission proceedings.