

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

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI</p>	<p>AE 071D</p> <p>ORDER</p> <p>DEFENSE UNCLASSIFIED <i>EX PARTE</i> SUBMISSION SUPPLEMENTING THE DEFENSE THEORY OF ITS CASE AND MITIGATION FOR THE COMMISSION'S CONSIDERATION OF CLASSIFIED SUMMARIES PROVIDED UNDER M.C.R.E. 505</p> <p>3 OCTOBER 2014</p>
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1. The Accused is charged with multiple offenses in violation of the Military Commissions Act of 2009, 10 U.S.C. §§ 948 *et seq.*, Pub. L. 111-84, 123 Stat. 2574 (Oct. 28, 2009). He was arraigned on 9 November 2011.

2. The Commission in AE 120NN<sup>1</sup> ordered the Defense to file *ex parte* and under seal, its updated summary of its theory of the defense and mitigation not later than 3 October 2014. The Defense submitted AE 071B<sup>2</sup> and AE 071C<sup>3</sup> in response to that order. In AE 071B the Defense requested the opportunity to make an *ex parte* presentation in conjunction with its filings.

3. The Commission heard argument on AE 120EE<sup>4</sup> on 4 August 2014<sup>5</sup>, during which the Prosecution did not oppose the conduct of an *ex parte* presentation, but did oppose the Defense proposed timeline.

<sup>1</sup> ORDER, Defense Motion for the Commission to Defer Consideration of Summaries Provided by the Prosecution in AE 120CC Until the Defense Can Submit an *Ex Parte* Summary of Its Theory of Defense and Mitigation, issued 9 September 2014.

<sup>2</sup> Defense Unclassified *Ex Parte* Submission Supplementing the Defense Theory of Its Case and Mitigation for the Commission's Consideration of Classified Summaries Provided Under M.C.R.E. 505, filed 2 October 2014.

<sup>3</sup> Classified Defense *Ex Parte* Submission Supplementing the Defense Theory of Its Case and Mitigation for the Commission's Consideration of Classified Summaries Provided Under M.C.R.E. 505, filed 2 October 2014.

<sup>4</sup> Defense Motion for the Commission to Defer Consideration of Summaries Provided by the Prosecution in 120CC Until the Defense Can Submit an *Ex Parte* Summary of Its Theory of Defense and Mitigation, filed 20 July 2014.

<sup>5</sup> See Unofficial/Unauthenticated Transcript of the al Nashiri (2) Motions Hearing Dated 4 August 2014 from 1:47 P.M. to 4:03 P.M. at pp. 4796 - 4797.

4. The Defense request for an *ex parte* presentation in conjunction with its filings at AE 071B and AE 071C to update the Commission on its theory of the case and theory of mitigation is **GRANTED**. The *ex parte* presentation will occur on 10 October 2014 at 10:00 A.M., in the secure area near the Trial Judiciary Offices. Trial Judiciary staff will coordinate details of the meeting with Defense Counsel. The Defense filings, AE 071B and AE 071C along with the transcript of the 10 October 2014 *ex parte* presentation will remain under seal until this Commission or another court of competent jurisdiction directs otherwise.

So **ORDERED** this 3rd day of October, 2014.

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VANCE H. SPATH, Colonel, USAF  
Military Judge  
Military Commissions Trial Judiciary