

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

UNITED STATES OF AMERICA

v.

ABD AL RAHIM HUSSAYN
MUHAMMAD AL NASHIRI

AE 120NN

ORDER

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

9 SEPTEMBER 2014

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 Defense in AE 120EE requested the Commission “allow the defense to submit an *ex parte* summary of its present theory of the defense and mitigation prior to the Commission’s consideration of the summaries submitted by the prosecution in AE 120CC and any other additional summaries the prosecution may submit pursuant to AE 120AA.” (AE 120EE at 1). The Defense requested 60 days from the date of any ruling on its motion to file an updated *ex parte* summary of its theory of the defense and mitigation. The Prosecution in AE 120FF did “not object to the defense providing its theory of the case to the Commission *ex parte*, but the government respectfully request[ed] that the Commission require the defense to present its theory by 1 September 2014. To that end, the [Prosecution argued the] Commission should deny the defense motion to the extent it seeks to delay any pretrial matters by 60 days, including the Commission’s review of the government-proposed summaries.” (AE 120FF at 1). A reply was not filed. Oral argument was not requested or conducted.

3. The Commission welcomes the opportunity to become informed concerning the Defense's updated theory of the defense and mitigation. The Commission concurs with the parties' assertions it will assist the Commission in conducting the reviews mandated by Military Commission Rule of Evidence (M.C.R.E.) 505. The Commission has not started to consider the Prosecution's requests for summaries and other relief under M.C.R.E. 505 in the AE 120 series. The Commission cancelled the hearings scheduled for 8-12 September 2014 in AE 203H, independent of the Defense request in AE 120EE.

4. The Defense will file with the Commission, *ex parte* and under seal, its updated summary of its theory of the defense and mitigation not later than 3 October 2014 using the next AE designator in the AE 071 series. If the Defense desires to make an oral presentation *ex parte* and *in camera* in conjunction with its filing, the Defense will include such a request in its pleading. If requested, the *ex parte in camera* presentation will be conducted during the October 2014 hearings at U.S. Naval Station, Guantanamo Bay, Cuba, with the date established during a Rule for Military Commission 802 conference.

5. Accordingly, so much of AE 120EE as requests the Commission defer consideration of summaries submitted by the prosecution in response to AE 120CC is **GRANTED**. So much of AE 120EE as requests 60 days from the date of this ruling to submit *ex parte* its updated summary of its theory of the defense and mitigation is **DENIED**.

So **ORDERED** this 9th day of September, 2014.

//s//

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