

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

UNITED STATES OF AMERICA

v.

ABD AL RAHIM HUSSAYN
MUHAMMAD AL NASHIRI

AE 140F

ORDER

GOVERNMENT MOTION
For Inquiry Into The Mental Capacity Of
The Accused Under R.M.C. 706

7 February 2013

FOR: Commander, Joint Task Force National Capital Region Medical, 8901 Wisconsin Ave,
Bethesda, MD 20889-5600

1. In the above referenced Military Commission, you are directed to appoint and convene a mental responsibility board to inquire into the mental competency of the Accused to stand trial. The grounds underlying the mental responsibility board is found in the Government Motion for Inquiry into the Mental Capacity of the Accused under R.M.C. 706 and responsive pleadings, dated 15 Nov 2012. (Encl 1)
2. In accordance with Rule for Military Commissions 706, the board will consist of at least three or more physicians or clinical psychologists; however, at least one board member will be either a psychiatrist or a clinical psychologist. While individuals who have served previously as a mental health counselor for Mr. al-Nashiri may be consulted by the board, these individuals are not to be members of the board. The board will make separate and distinct findings as to each of the following questions:
 - a. Is the accused presently suffering from a mental disease or defect?
 - b. What is the clinical psychiatric diagnosis?
 - c. Does the mental disease or defect render the accused mentally incompetent to understand the nature of the proceedings against him or cooperate intelligently in or conduct his defense?
3. In conducting this board, the following information, as a minimum, shall be considered:
 - a. The charges and all allied papers associated therewith;
 - b. The results of psychological tests;

c. Medical tests to determine the extent of any organic brain damage, if any, if such testing is medically indicated;

d. Interviews with the accused;

e. Relevant medical records and detention history of the accused, including classified records reflecting the nature of post-capture detention prior to surrender to Department of Defense detention, and Department of Defense detention; and

f. The unofficial transcript of the in-court testimony of defense expert Dr. Iacopino.

The board shall exercise its independent professional judgment in deciding whether and how to apply the opinions and conclusions of defense expert Dr. Iacopino and give his opinions and conclusions the weight the board considers appropriate in applying its best medical judgment. The government shall append the enclosures to this order and shall provide a copy to the Commission upon transmittal to the appointing authority.

4. The assistance and identity of an interpreter and physical security measures offered by the commander of the detention facility during the examination (e.g. shackles, guard force members present during the examination, etc.) shall be within the discretion of the board to determine, applying their best professional judgment. If interpreters or guard force members are present during the examination, their identities shall be disclosed to both the government and defense, and they shall be bound by the confidentiality strictures provided at para 7, *infra*.

5. Upon the conclusion of the board's inquiry, a statement consisting only of the board's ultimate conclusions as to the questions in paragraph 2a through 2c of this order will be provided to the trial counsel (prosecutors). The Chief Prosecutor is BG Mark Martins, USA and the trial counsel assigned to this case are Mr. Anthony Mattivi and CDR Andrea Lockhart, JAGC, USN. The trial counsel will provide the board with their contact information.

6. A full report, which may include statements made by the accused or any evidence derived from such statements, may be released only to other medical personnel and only for medical purposes, unless other disposition is authorized by the Commission, except that a copy of the full report will be provided to the accused's detailed military defense counsel, LCDR Stephen Reyes, JAGC, USN, or the civilian learned counsel, Mr. Richard Kammen. Their contact information will be provided to the board by the trial counsel.

7. Neither the contents of the full report (or any portion therein) nor any matter considered or discussed by the board during its investigation shall be released or disclosed by the board, other medical personnel, or any interpreter/translator or guard force member assigned to assist in the examination to any person not authorized to receive the full report, except pursuant to an order by the military judge. Discussions of the examination and the names of the board members, interpreters, or guard force members (if any) similarly shall not be discussed with anyone not authorized to receive the full report. The names of the board members, interpreters, and guard force members (if any) shall be submitted by the government in a filing and sealed by the Commission, and shall be treated as sealed until entry of a formal sealing order.

8. Enclosed are a copy of the Government's motion, the responsive pleadings, the charge sheet, and all allied papers associated with the charges against the accused, and the reports and transcript referenced in para. 3.e and 3.f, *supra*.

9. This case has been referred to trial and only awaits the results of the mental capacity board before trial may continue. The board's findings, as prescribed in paragraphs 4 and 5, *supra*, shall be made available to the parties not later than the close of business on 1 April 2013. Any request for extension shall be submitted through the trial counsel to the Commission.

10. All members of the medical board and other personnel present during the examination (interpreters and guard force, as required) must be cleared and have been granted access to classified information up to the TS/SCI level and must be read on to the appropriate Special Access Programs before beginning their examination of the accused.

11. Defense counsel in this case are available to assist the board members in making initial liaison with Mr. al-Nashiri. The board is invited to utilize this resource if, in their professional judgment, such assistance would facilitate the board's accomplishment of the examination.

SO ORDERED this 7th day of February 2013:

//signed//
JAMES L. POHL
COL, JA, USA
Military Judge

5 Encls:

1. Charge Sheet, Allied Papers, and Motions/Responses germane to AE140;
2. The results of any previously administered psychological tests;
3. Accounts of prior medical/psychological interviews with the accused;
4. Relevant medical records and detention history of the accused, including classified records reflecting the nature of post-capture detention prior to surrender to Department of Defense detention, and Department of Defense detention; and
5. The unofficial transcript of the in-court testimony of the parties relevant to this issue and defense expert Dr. Iacopino.