

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

UNITED STATES OF AMERICA

v.

ABD AL RAHIM HUSSAYN
MUHAMMAD AL NASHIRI

AE 145F

ORDER

DEFENSE EX PARTE IN CAMERA
REQUEST FOR ADDITIONAL HOURS
FOR EXPERT CONSULTANT RE:

AE 145B - MOTION FOR THE
COMMISSION TO CONSIDER THE
DEFENSE REQUEST FOR EXPERT
ASSISTANCE *IN CAMERA AND EX
PARTE* AND TO COMPEL THE
CONVENING AUTHORITY TO
APPROVE FUNDING THE EXPERT
AS A DEFENSE CONSULTANT

9 March 2015

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. On 11 February 2015, the Defense submitted an *ex parte* and *in camera* request to the Commission for an additional 200 hours of funding for a previously approved expert consultant. (AE 145C at 1). The Commission deferred ruling on AE 145C until the Defense complied with Rule for Military Commissions (R.M.C.) 703(d) and Regulation for Trial by Military Commission (2011 Edition) (R.T.M.C.) 13-9. (AE 145D at 2).
3. On 27 February 2015, the Defense submitted AE 145E, in accordance with the Commission's directive renewing its motion to compel the Convening Authority to approve additional funding for the same expert consultant. AE 145E contained the following attachments: (Attachment A), "Defense Request for Additional Funding for the Defense Expert Consultant *United States v. al Nashiri*," dated 22 January 2015; and (Attachment B), Convening Authority's response to

“Request for Additional Funding for Defense Expert Consultant, *U.S. v. al Nashiri*,” dated 3 February 2015. (AE 145E).

4. The Commission considers the Convening Authority’s actions on the Defense’s *ex parte* request for additional funding, dated 22 January 2015, to be a constructive denial. (AE 145E, Attachment B). The Commission finds, for important and compelling reasons set forth in the Defense’s *ex parte* submissions, the requested Defense expert consultant remains relevant and necessary to the preparation of the Defense’s case. “The Court of Appeals for the Armed Forces (CAAF) has adopted a three-part test for determining necessity: ‘First, why the expert assistance is needed. Second, what would the expert assistance accomplish for the accused. Third, why is the defense counsel unable to gather and present the evidence that the expert assistant would be able to develop.’” *United States v. Walker*, 71 M.J. 523, 530 (N.M. Ct. Crim. App. 2012)(quoting *United States v. Gonzalez*, 39 M.J. 459, 461 (C.M.A. 1994)). The Commissions finds all three criteria are substantiated by the Defense’s complete *ex parte* submission.

5. It is Hereby **ORDERED**: The Defense request for an additional 200 hours of funding for the previously approved crime scene expert, as substantiated in its *in camera* and *ex parte* filings, is **GRANTED**, as detailed in the Defense’s 22 January 2015, *ex parte* submission to the Convening Authority requesting additional funding. In the event that the need for additional funding beyond that requested in AE 145E arises, the Defense will submit another *ex parte* request to the Convening Authority for a decision in accordance with R.M.C. 703 and R.T.M.C. 13-9. The Defense *ex parte* submissions to the Convening Authority and to this Commission, filed in this series (AE 145) of motions will be sealed until further order from this Commission or another court of competent jurisdiction.

Accordingly, AE 145E is **GRANTED**.

6. So **ORDERED** this 9th day of March, 2015.

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