

UNITED STATES OF AMERICA v. ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI	AE 272B INTERIM ORDER Defense Motion For Appropriate Relief: Inquiry Into The Existence Of A Conflict Of Interest Burdening Counsel's Representation Of The Accused Based On Ongoing Executive Branch Investigations 9 June 2014
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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. On 22 April 2014, Defense filed a motion (AE 272) requesting the Commission conduct a thorough inquiry into potential conflicts of interests arising from an FBI investigation of military commission defense teams. The Defense further asked the Commission order any current or past member of Mr. al-Nashiri's Defense Team who was contacted and/or interviewed by agents or contractors of any federal governmental agency, including the FBI, concerning any defense related matter to disclose said contact and/or communication to learned counsel immediately, irrespective of any non-disclosure agreements, which may have been signed. The Defense further requested the Commission order the Special Review Team, assembled in response to AE 292 in the case of *United States v. Mohammad, et. al.*, to make a factual submission in Mr. al-Nashiri's case disclosing the actual nature of the FBI Preliminary Inquiry and the extent to which it impacts members of Mr. al-Nashiri's Defense Team. The Prosecution filed a response (AE 272A) requesting the requested relief be denied as the Defense failed to provide any evidence of an actual conflict in this case. The Prosecution stated they are not aware of any investigation of any defense counsel in this case, nor of any conduct by defense counsel, which might tend to disqualify them from representing the Accused.

The Prosecution did not oppose the issuance of an interim order similar to the one issued in *United States v. Mohammed, et al.* (AE 292C) directing any current or past members of the Defense Team who were contacted by any federal investigators on any defense-related matter disclose that information to the lead defense counsel. A reply was not filed.

3. The Commission, in an abundance of caution, and in furtherance of any future inquiry, directs any current or former member of Mr. al-Nashiri's Defense Team who was contacted and / or interviewed by agents of any federal governmental agency, including the FBI, concerning the delivery of any detainee's written communication by a member of a Defense Team to a third party under circumstances which may violate this Commission's Protection of Classified Information Throughout All Stages of Proceedings Order with Amendment and Supplemental Ruling (AE 013E, AE 013L and AE 013M) must not later than 30 June 2014, disclose this contact and / or communication to Learned Defense Counsel or the Military Judge, irrespective of any sensitive information non-disclosure agreements which may have been signed. The Lead Defense Counsel will immediately cause a copy of this order to be provided to all current or former members of Mr. al-Nashiri's Defense Team.

4. AE 272 is thus GRANTED in part. The Commission reserves determination on other requested relief AE 272.

So ORDERED this 9th day of June, 2014.

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JAMES L. POHL
COL, JA, U.S. Army
Military Judge