

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

<b>UNITED STATES OF AMERICA</b>  <b>v.</b>  <b>ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI</b>	<b>AE 278F</b>  <b>RULING</b>  <b>DEFENSE MOTION TO COMPEL THE GOVERNMENT TO DISCLOSE ITS PLANS AND PROTOCOLS FOR CARRYING OUT THE EXECUTION OF THE ACCUSED</b>  <b>23 MARCH 2015</b>
---	---

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 filed AE 278 requesting the Commission compel the Prosecution to provide the protocols for how the Government intends to carry out the execution of the Accused if he is convicted and sentenced to death. The Prosecution's response (AE 278D) argued for denial of the motion as it was premature in nature and the execution protocols do not constitute proper mitigation evidence. The Defense reply (AE 278E) renewed its request for the Commission to compel the Prosecution answer to the four (4) questions in the Defense's motion:

What are the protocols and procedures it intends to follow in order to carry out their plan to kill the accused? What will the method of execution be? How will his executioners be trained? Where will he die? (AE 278 at 1).

The Defense asserted:

Those questions require answering for the following reasons: (1) an ongoing regulatory obligation of the Secretary of Defense, (2) an understanding of the specific protocol will allow for a more streamlined motions practice and presentation of mitigating evidence, (3) the evidence sought is proper mitigation, and (4) the exact means of execution is relevant – even according to the government's own standard of relevance considering the accused's treatment in confinement. (AE 278E at 1).

The motion was argued on 5 August 2014.<sup>1</sup>

3. The cases the Defense refer the Commission to all speak in terms of a fact finder considering any relevant mitigating factors or evidence in reaching a punishment determination. (*See* AE 278 at 4). The Commission, at this time, does not find production of these documents, if they exist, as warranted under R.M.C. 703(e)(1)(C) as they are not relevant or necessary under R.M.C. 703(f)(1). Federal jurisprudence holds the protocols are not relevant until an execution date is established, a date unknowable to the Commission at this point in time in the process of conducting this trial. *See Higgs v. United States*, 711 F. Supp. 2d 479, 554-55 (D. Md. 2010).

4. The Commission finds the request is not ripe at this time. The Accused has not been convicted, nor has the Accused been sentenced to death.

Accordingly, AE 278 is **DENIED**.

So **ORDERED** this 23th day of March, 2015.

//s//

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

---

<sup>1</sup> *See* Unofficial/Unauthenticated Transcript of the al Nashiri (2) Motions Hearing Dated 5 August 2014 from 09:06 A.M. to 10:21 A.M. at pp. 4823 - 44.