

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

UNITED STATES OF AMERICA

v.

ABD AL RAHIM HUSSAYN
MUHAMMAD AL NASHIRI

AE 284I

RULING

DEFENSE MOTION TO COMPEL
PRODUCTION OF WITNESSES TO
TESTIFY AT THE HEARINGS ON
AE 284

17 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 284C requested the Commission order the Government produce Rear Admiral Kyle J. Cozad, Commander of Joint Task Force Guantanamo (“JTF-GTMO”), the Senior Medical Officer (“SMO”), and another high-ranking Department of Defense (“DoD”) Official as witnesses in support of the Defense’s request to compel JTF-GTMO to allow the Accused to Skype with his elderly parents (AE 284). The Prosecution urged denial as “[t]hese witnesses, however, are not necessary; the Commission can determine—without witness testimony—whether to intercede into the specifics of the medical care provided to the accused and whether Skype is necessary to provide the accused with adequate medical care.” (AE 284F at

1.) A reply was not filed. The motion was argued in open and closed sessions on 6 August 2014.¹

3. The issue presented to the Commission in AE 284 is whether a highly monitored one (1) hour Skype call between the Accused and his aging parents is necessary to provide the Accused with adequate medical care. Stated conversely, the question is whether denial of the Skype call shows

¹ See Unofficial/Unauthenticated Transcript of the al Nashiri (2) Motions Hearing Dated 6 August 2014 from 10:40 A.M. to 12:07 P.M. at pp. 5076 – 89; and, See Unofficial/Unauthenticated Redacted Transcript of the al Nashiri (2) Motions Hearing Dated 6 August 2014 from 1:09 P.M. to 1:32 P.M. at pp. 5092-5105.

a “deliberate indifference to serious medical needs of prisoners [which] constitutes the ‘unnecessary and wanton infliction of pain’ ... proscribed by the Eighth Amendment.” *Estelle v. Gamble*, 429 U.S. 97, 103-05 (1976).² In AE 284C this translates into whether the Defense has shown the requested witnesses can provide relevant and necessary testimony on this specific issue. The Defense has made an insufficient showing of the relevance and necessity of the requested witnesses testimony under R.M.C. 703(b)(1) to resolve the issues presented by AE 284.

3. The Defense desires to test, via cross examination, the declarations of a high-ranking DoD Official (Attachment B, AE 284A) and the SMO (Attachment C, AE 284A). The declaration of the high-ranking DoD Official is not relevant. The impact, or lack thereof, on the security of the facility where the Accused is housed is irrelevant to the issues presented in AE 284. The declaration of the SMO is, in part, consistent with the Defense assertion that contact with the Accused’s parents via Skype could be medically beneficial. However, testing the SMO’s opinions in court would be of little benefit in resolving AE 284.

4. The Commission finds the proposed testimony of Rear Admiral Cozad is cumulative with the testimony of Dr. Sondra Crosby who testified at the request of the Defense and “Dr. 97”³ who was provided by the Government as “one (1) of the physicians, psychiatrists, or psychologists assigned to or working at Guantanamo Naval Base, Cuba, who is familiar with the Accused’s medical records and condition and is providing or has provided him medical care” (AE 205I⁴ at

² The Commission, in quoting from *Estelle v. Gamble*, is not ruling on the applicability of the Eighth Amendment or any other constitutional provision in this military commission.

³ The identity of “Dr. 97” is protected from disclosure by AE 205W, ORDER, Government Notice Of Identity of Witness on Interlocutory Matter and Request that Name Be Protected From Disclosure to Public and Accused As Justified By Law and the Public Interest, issued 29 April 2014.

⁴ AE 205I, ORDER, Defense Motion To Compel Witnesses To Testify At The Hearing On AE 205, issued 11 March 2014.

3). Both Dr. Crosby⁵ and “Dr. 97⁶” testified during the hearings in April 2014 concerning the adequacy of the medical care provided the Accused, which was the focus of AE 205.

Additionally, Admiral Cozad’s testimony is not relevant or necessary since he is not identified as a treating medical person with knowledge of the Accused’s medical records or history.

Accordingly, AE 284C is **DENIED**.

So **ORDERED** this 17th day of September, 2014.

//s//

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

⁵ See Unofficial/Unauthenticated Transcript of the al Nashiri (2) Motions Hearing Dated 24 April 2014 from 09:06 A.M. to 10:33 A.M. at pp. 3697 – 3759 and Unofficial/Unauthenticated Transcript of the al Nashiri (2) Motions Hearing Dated 24 April 2014 from 10:52 A.M. to 11:20 A.M. at pp. 3760 – 70.

⁶ See Unofficial/Unauthenticated Transcript of the al Nashiri (2) Motions Hearing Dated 27 April 2014 from 11:12 A.M. to 1:25 P.M. at pp. 4194 – 4271 and Unofficial/Unauthenticated Transcript of the al Nashiri (2) Motions Hearing Dated 27 April 2014 from 1:35 P.M. to 3:09 P.M. at pp. 4272 – 4305.