

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

UNITED STATES OF AMERICA

v.

ABD AL RAHIM HUSSAYN
MUHAMMAD AL NASHIRI

AE 321B

INTERIM RULING

GOVERNMENT MOTION FOR THE
COMMISSION TO APPROVE A
PROPOSED MEMBERS'
QUESTIONNAIRE AND ORDER
COMPLETION BY PROSPECTIVE
MEMBERS

21 OCTOBER 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 Prosecution filed AE 321 on 8 October 2014 and requested “the Commission approve the government’s proposed members’ questionnaire and order prospective members to complete the written questionnaire in advance of *voir dire*.” (AE 321 at 1). The Defense filed AE 321A on 17 October 2014 and requested the Commission “extend the time allowed for the Defense to respond to the prosecution’s proposed jury questionnaire until April 1, 2015 or 60 days after completion of anticipated litigation over the adequacy of summaries submitted pursuant to AE 120AA and/or completion of litigation regarding the Government’s refusal to produce the entire exculpatory SSCI report,¹ whichever is later.” (AE 321A at 1. Footnote omitted). In the certificate of conference the Defense reported “[t]he prosecution does not oppose a four-week extension of time to respond to AE 321 and submit additional questions. The prosecution opposes the lengthy extension requested by the defense. The prosecution reserves the right to oppose the questions submitted by the defense.” (AE 321A at 5). The Prosecution requested oral

¹ SSCI report refers to the Senate Select Committee on Intelligence’s Report on the CIA’s Rendition, Detention and Interrogation Program.

argument concerning the proposed panel member questionnaire. The Defense requested oral argument concerning the extension of time to file a response. “[In accordance with Rule for Military Commission (R.M.C.)] 905(h) the decision to grant oral argument on a written motion is within the sole discretion of the Military Judge.”² At this time, oral argument is not necessary to the Commission’s interim decision on the Defense request for an extension in time to file a response.

3. Until the request for delay is fully briefed³ by both Parties, the Defense request for a delay to file a response to AE 321 is **GRANTED**.

4. The Defense request for oral argument on AE 321A is held in abeyance pending it being fully briefed by the Parties. The Prosecution request for oral argument on AE 321 is held in abeyance pending it being fully briefed by the Parties.

Accordingly, further litigation concerning the proposed questionnaire (AE 321) is held in abeyance pending the resolution of the Defense request for an extension in time (AE 321A).

So **ORDERED** this 21st day of October, 2014.

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

² Military Commissions Trial Judiciary Rule of Court 3(5)(m) (May 2014).

³ The Commission considers an issue fully briefed when a response is filed and the opportunity for the filing of a reply has occurred. Military Commissions Trial Judiciary Rule of Court 3(7)(c) – (e) (May 2014).