

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

UNITED STATES OF AMERICA

v.

ABD AL RAHIM HUSSAYN
MUHAMMAD AL NASHIRI

AE 332KK

ORDER
(COMPRESSED BRIEFING SCHEDULE)

15 September 2016

1. The Accused is charged with multiple offenses in violation of the Military Commissions Act (M.C.A.) 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 8 May 2015, the Defense filed AE 332X renewing its request that all charges and specifications be dismissed with prejudice as a result of unlawful influence (UI).¹ The Government filed a response² opposing the motion, and the Defense filed a reply³ to the Government's response. On 4 August 2016, the Defense filed AE 332DD requesting this Commission order the Government to produce certain witnesses in support of AE 332X.⁴ On 1 September 2016, this Commission denied the Defense request to compel the production of witnesses due to the Defense's failure to "demonstrate why the requested witnesses' testimonies [were] relevant and necessary for the resolution of AE 332X."⁵ (AE 332GG at 4).
3. During the 7-9 September 2016 hearings, this Commission heard video teleconference testimony on AE 332X from Mr. [REDACTED] a Defense-requested witness the Government had

¹ AE 332X, Defense Renewed Motion to Dismiss for Unlawful Influence, filed 8 May 2015.

² AE 332Y, Government Response to Defense Renewed Motion to Dismiss for Unlawful Influence, filed 22 May 2015.

³ AE 332Z, Defense Reply to Government Response to Defense Renewed Motion to Dismiss for Unlawful Influence, filed 29 May 2015.

⁴ 1) AE 332DD, Defense Motion to Compel Witnesses in Support of AE 332X: Defense Renewed Motion to Dismiss for Unlawful Influence, filed 4 August 2016. Specific witnesses: 1) Mr. Jason Foster; 2) Ms. Donna Wilkins; 3) Ms. Stephanie Flannery; 4) Mr. Michael Quinn; 5) Colonel (COL) [REDACTED] 6) Ms. [REDACTED] 7) Mr. [REDACTED] 8) Mr. Mark Toole; 9) Lieutenant Colonel (LTC) Patricia Lewis; 10) Captain (CPT) Matthew Rich; 11) Mr. [REDACTED] and 12) Ms. Alyssa Adams.(AE 332DD at 1).

⁵ AE 332GG, Ruling, Defense Motion to Compel Production of Witnesses in Support of AE 332X: Defense Renewed Motion to Dismiss for Unlawful Influence, dated 1 September 2016.

previously agreed to produce.⁶ During cross-examination of Mr. [REDACTED] it appeared to the Commission that other witnesses and evidence may be relevant to resolution of the motion.⁷ Accordingly, the Commission announced that it was prepared to reconsider its ruling in AE 332GG and requested input from the parties in order to resolve the UI issue at the next session.

4. Because this Commission is currently scheduled to reconvene on 17-21 October 2016,⁸ the Commission finds it necessary to compress the normal briefing timeline set out in Military Commissions Trial Judiciary Rules of Court 3.7 to ensure the resolution of any potential scheduling conflicts prior to the resumption of hearings.

5. As discussed during the September session, the Defense is hereby directed to file a brief explicitly describing how the evidence attached to the motion filings and the testimony of Mr. [REDACTED] raised “some evidence” of actual UI or apparent UI (as opposed to evidence of technical non-compliance with this Commission’s prior order in AE 332U), and/or what further discoverable information or witness testimony the Defense believes is needed for the Defense to meet its burden under *Salyer*.⁹ *See generally, United States v. Salyer*, 72 M.J. 415, 423 (C.A.A.F. 2013). The Defense is further directed to file its brief **no later than 1600 hours, 22 September 2016**.

6. The Prosecution is directed to produce a brief in response, addressing the issue of whether the Defense has raised some evidence of actual UI or apparent UI, to include a response to any Defense requested discoverable information or witness testimony, specifically addressing whether or not the requested information or testimony meets the requirements of R.M.C.

⁶ Due to the late hour and the witness’s unavailability to testify later in the evening, the Defense was unable to conduct a re-direct of Mr. [REDACTED]. The Defense will be given the opportunity to do so at a future session.

⁷ Unofficial/Unauthenticated Transcript of the *US v. al Nashiri* (2) Motions Hearing dated 8 September 2016 from 11:34 A.M. to 12:47 P.M. at p. 6614.

⁸ AE 203O, Scheduling Order (Amended), dated 9 August 2016.

⁹ Unofficial/Unauthenticated Transcript of the *US v. al Nashiri* (2) Motions Hearing dated 8 September 2016 from 11:34 A.M. to 12:47 P.M. at pp. 6605 - 06.

703(b)(1). The Prosecution's response is due **no later than seven (7) calendar days** after the Defense filing.

7. If the Defense chooses to file a reply, such reply shall be filed **no later than three (3) business days** after the filing of the Government response.

So **ORDERED** this 15th day of September, 2016.

//s//

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