

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

<p><b>UNITED STATES OF AMERICA</b></p> <p><b>v.</b></p> <p><b>ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI</b></p>	<p><b>AE 332W</b></p> <p><b>RULING</b></p> <p><b>DEFENSE MOTION (AE 332G) TO COMPEL WITNESSES TO TESTIFY AT THE HEARING ON AE 332: DEFENSE MOTION TO DISMISS FOR UNLAWFUL INFLUENCE AND DENIAL OF DUE PROCESS FOR FAILURE TO PROVIDE AN INDEPENDENT JUDICIARY</b></p> <p><b>9 MARCH 2015</b></p>
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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. In support of AE 332, Defense Motion to Dismiss for Unlawful Influence and Denial of Due Process for Failure to Provide an Independent Judiciary, the Defense filed AE 332G, Defense Motion to Compel Witnesses to Testify at The Hearing on AE 332G, Defense Motion to Compel the Production of Witnesses to Testify at the Hearing on AE332 (Unlawful Influence). The Defense requested the following witnesses:

Lieutenant General Burne, U.S. Air Force, The Judge Advocate General (TJAG) of the Air Force;

Lieutenant General Flora Darpino, U.S. Army, The Judge Advocate General of the Army;

Vice Admiral Nanette DeRenzi, U.S. Navy, The Judge Advocate General of the Navy;

Rear Admiral Steven Poulin, U.S. Coast Guard, The Judge Advocate General of the Coast Guard;

Lieutenant Colonel [REDACTED] U. S. Marine Corps, Office of General Counsel (OGC), Office of the Secretary of Defense (OSD);

Mr. Robert Taylor, SES, OSD, OGC;

Mr. Darrin Hostetler, SES, OSD, OGC; and,

The Honorable Stephen Preston, OSD, OGC.

The Prosecution did not file a response, indicating it was ready to argue the motion.<sup>1</sup> The motion was argued on 23 February 2015.<sup>2</sup>

3. Mr. Ary was ordered produced on 23 February 2015<sup>3</sup> and testified on 25 February 2015.<sup>4</sup>

After Mr. Ary's testimony was taken, the Defense waived their request for all witnesses other than Lieutenant General Burne, Lieutenant General Flora Darpino, and Vice Admiral Nanette

DeRenzi.<sup>5</sup> The Government conceded the production of Lieutenant General Burne and

Lieutenant General Flora Darpino.<sup>6</sup> Vice Admiral Nanette DeRenzi was ordered produced after

additional oral argument.<sup>7</sup> These three witnesses were scheduled to testify at various times on 27 February 2015.

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<sup>1</sup> Unofficial/Unauthenticated Transcripts of the al Nashiri (2) Motions Hearing Dated 23 February 2015 from 1:02 P.M. to 2:52 P.M. pp5389-90.

<sup>2</sup> See Unofficial/Unauthenticated Transcripts of the al Nashiri (2) Motions Hearing Dated 23 February 2015 from 1:02 P.M. to 2:52 P.M. pp 5384-5458 and 23 February 2015 from 4:01 P.M. to 4:14 P.M. pp 5459 – 68.

<sup>3</sup> Unofficial/Unauthenticated Transcript of the al Nashiri (2) Motions Hearing Dated 23 February 2015 from 4:01 P.M. to 4:14 P.M. at p 5462.

<sup>4</sup> See Unofficial/Unauthenticated Transcript of the al Nashiri (2) Motions Hearing Dated: 25 February 2015 from 9:03 A.M. to 10:40 A.M. pp 5512 – 65 (Testimony Mr. Ary); 25 February 2015 from 11:04 A.M. to 11:13 A.M. pp 5566 – 73 (Testimony Mr. Ary); 25 February 2015 from 12:32 P.M. to 2:13 P.M. pp 5574 – 5643 (Testimony Mr. Ary); 25 February 2015 from 2:24 P.M. to 3:54 P.M. pp 5644 – 5700 (Testimony Mr. Ary);

<sup>5</sup> See Unofficial/Unauthenticated Transcript of the al Nashiri (2) Motions Hearing Dated 25 February 2015 from 4:02 P.M. to 4:43 P.M. at p 5717.

<sup>6</sup> *Id.*

<sup>7</sup> See Unofficial/Unauthenticated Transcript of the al Nashiri (2) Motions Hearing Dated: 27 February 2015 from 08:31 A.M. to 08:55 A.M. pp 5733 – 5749, and 27 February 2015 from 11:31 A.M. to 12:02 P.M. pp 5750 – 68. Decision on production at p. 5748.

4. On 26 February 2015, The Deputy Secretary of Defense rescinded Change 1 to the Regulation for Trial by Military Commission.<sup>8</sup> On 27 February 2015, just prior to the testimony of VADM DeRenzi, the Prosecution brought the rescission of Change 1 to the Commission's attention and marked it as an appellate exhibit.<sup>9</sup> The rescission of Change 1 rendered any testimony by the three service TJAGs irrelevant. The defense objected to the court's determination that the testimony was irrelevant.

5. Accordingly, AE 332G is **DENIED** in part and **MOOT** in part.

So **ORDERED** this 9th day of March, 2015.

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

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<sup>8</sup> See AE 332S, DEPSECDEF Action Memo, Rescission of Change 1 to the Regulation for Trial by Military Commissions, dated 26 February 2015.

<sup>9</sup> *Id.* at p 5762.