

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA v. ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI	AE 332Y Government Response To Defense Renewed Motion to Dismiss For Unlawful Influence 22 May 2015
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1. Timeliness

The government timely files this response pursuant to Military Commissions Trial Judiciary Rule of Court 3.7.c.(1).

2. Relief Sought

The government respectfully requests that the Commission deny the defense motion to dismiss because the Office of the Convening Authority is in compliance with the Commission's order AE 332U and the remedies set forth therein. The government further requests that the Commission approve the government's proposed sealing order. *See* Attachment B.

3. Overview

The Commission's remedy for apparent unlawful influence in this case has—over the course of the past two months—been implemented by the Office of the Convening Authority. Mr. Vaughn Ary resigned as Convening Authority, and Mr. Paul Oostburg Sanz has been appointed Convening Authority. Moreover, the legal advisors who previously worked on this case and helped construct Change 1 to the Regulations for Trial by Military Commission (“Change 1”) do not advise the Convening Authority on the Al-Nashiri case. Mr. Oostburg Sanz appointed Mr. Michael Quinn as the new Legal Advisor in April 2015—after the Commission's

Order at AE 332U—and Mr. Quinn has worked diligently to ensure that the Office of the Convening Authority fully complies with the Commission’s Order.

Indeed, Mr. Quinn and his staff have taken administrative actions to prevent any disqualified legal advisors from even accessing the accused’s electronic and hard copy files. The Office of the Convening Authority also created a separate email distribution list and case tracker so that no disqualified legal advisors and staff members receive case-related emails or the case tracker. And the Convening Authority holds separate meetings for this case, thus allowing the Convening Authority to receive legal advice relating to this case without other legal advisors being present, including those disqualified from working on this case. In fact, Mr. Quinn provides all advice to the Convening Authority on issues relating to the accused and this case.

Despite the Office of the Convening Authority removing disqualified personnel from the case and imposing safeguards to ensure that no disqualified personnel work on the case, the defense focuses on the weeks immediately following the Commission’s Order, before the Office of the Convening Authority implemented all of the safeguards identified *supra*. That period was a time of transition from Mr. Ary and those legal advisors disqualified from the case to Mr. Oostburg Sanz, Mr. Quinn, and the new legal staff who played no role in Change 1. The defense’s allegations that the disqualified legal advisors and staff continued to act in this case are wildly overstated and, at times, simply wrong. For example, the only legal advisor who provided any advice on the accused’s case in March 2015 was LCDR [REDACTED] LCDR [REDACTED] was not disqualified by name in AE 332U, had only joined the legal advisor staff in January 2015, and provided no input regarding Change 1. The defense correctly points out that LCDR [REDACTED] had professional disagreements with other legal advisors regarding the implementation of AE 332U. The defense, however, mischaracterizes LCDR [REDACTED] ultimate dismissal from the Office of the

Convening Authority, suggesting that he was removed for improper reasons. The facts reveal a chain of events that is inconsistent with the defense's allegations. LCDR [REDACTED] was removed from the legal-advisor staff because of significant concerns about his personal conduct and his ability to obtain the necessary security clearance.

Simply, the defense fails to recognize, and identify for the Commission, the significant steps undertaken by the Office of the Convening Authority to comply with the Commission's Order and, instead, offers a results-driven analysis to justify its wholly inappropriate request for dismissal. A judge may consider dismissal of charges when (1) the accused would still be prejudiced despite remedial actions, or (2) if no useful purpose would be served by continuing the proceedings. *United States v. Douglas*, 68 M.J. 349, 354 (C.A.A.F. 2010); *see also* AE 332U at 12-13 (citing *Douglas* and presenting this two-fold examination for why dismissal of charges is not warranted). Neither of these conditions has been met in this case. The Office of the Convening Authority has complied with the Commission's Order, purged whatever taint may have existed in the wake of Change 1, and assured that there has been absolutely no prejudice to the accused or to the appearance of fairness of these proceedings. As such, the Commission should deny the defense motion and proceed in due course.

4. Burden of Proof

As the moving party, the defense has the burden to demonstrate that the Office of the Convening Authority has failed to comply with AE 332U. R.M.C. 905(c)(2).

5. Facts

The government charged Abd Al Rahim Hussayn Muhammad Al Nashiri ("the accused") with multiple offenses under the Military Commissions Act of 2009, 10 U.S.C. § 948a *et seq.*, related to terrorist attacks against the United States and its allies. The accused is charged with

the attempted attack on USS THE SULLIVANS (DDG 68) on 3 January 2000, and the attacks on USS COLE (DDG 67) on 12 October 2000 and the French supertanker MV *Limburg* on 6 October 2002. These attacks resulted in the deaths of 18 people, serious injury to dozens of others, and significant property damage.¹

I. Procedural History of AE 332

On 13 January 2015, the defense alleged the Commission had been unlawfully influenced by the amendment to Paragraph 6-2 of the 2011 Regulation for Trial by Military Commission (“R.T.M.C”). AE 332. The amended paragraph, often referred to in the record as “Change 1,” provided:

Once detailed, military commissions shall be the military judge’s exclusive judicial duty until adjournment A detailed military judge shall be issued assignment orders for duty at the venue where the military commissions are convened.

AE 332, Attachment A at 2. On 26 February 2015, while the parties were presenting evidence on AE 332, the Deputy Secretary of Defense rescinded Change 1. AE 332S.

The Commission nevertheless found the rescission of Change 1 “only removes part of the appearance of unlawful influence.” AE 332 U at 19. The Commission ordered additional relief, including the disqualification of the Convening Authority (Mr. Vaughn Ary), and his staff of legal advisors (Mr. Mark Toole, Ms. Alyssa Adams, LTC Patricia Lewis, CDR Raghav Kotval,

¹ The Commission dismissed the separate charges relating to the accused’s alleged participation in the attack on MV *Limburg* (Charge IV, Specification 2, and Charges VII-IX). AE 168G; AE 241C. The government moved for reconsideration of the Commission’s Order dismissing those charges. AE 168H; AE 241D. The Commission granted reconsideration and, on reconsideration, denied the government’s requested relief, while modifying the initial Order to state dismissal of the charges was without prejudice. AE 168K; AE 241G. The Order does not affect the Conspiracy charge (Charge V), which includes overt acts comprising the attack on MV *Limburg*. On 29 September 2014, the government filed an interlocutory appeal with the United States Court of Military Commission Review (“U.S.C.M.C.R.”), causing AE 168K/241G to be stayed automatically pending disposition by the U.S.C.M.C.R. On 12 November 2014, the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) granted the defense request to stay the proceedings before the U.S.C.M.C.R. Order, *In re Abd Al-Rahim Hussein Muhammed Al-Nashiri*, No. 14-1203 (D.C. Cir. Nov. 12, 2014). On 10 February 2015, the D.C. Circuit heard oral argument.

and Captain Matthew Rich). *Id.* at 20. Mr. Vaughn Ary immediately ceased all activity with respect to the accused's case, and he resigned as Convening Authority effective 21 March 2014. Mr. Oostburg Sanz replaced Mr. Ary as the Convening Authority on 23 March 2015. AE 332X at 8. The defense now argues that the Office of the Convening Authority has not adequately complied with the Commission's Order at AE332U, and, therefore, that the case should be dismissed. AE 332X. In doing so, the defense fails to recognize the prompt and responsible steps undertaken by the Office of the Convening Authority to comply with the Order.

II. The Office of the Convening Authority Undertook Prompt and Responsible Actions To Comply with the Commission's Order

A. Prior to the Appointment of a new Convening Authority and Legal Advisor

Mr. Vaughn Ary resigned as the Convening Authority on 21 March 2015. In addition to Mr. Ary's resignation, the Office of the Convening Authority sought to comply with the Commission's Order by having each of the legal advisors named in the Order cease all work that reasonably could be construed as providing legal advice on this case. Moreover, the Office of the Convening Authority and the Department of Defense, Office of General Counsel ("DoD OGC"), appointed the new Convening Authority and Legal Advisor. Prior to these appointments, however, the staff of legal advisors engaged in virtually no activity on any military-commission case. The only work—and nonsubstantive work at that—related to the consideration of the defense request for additional hours for learned counsel. Due to the nature of the request, the legal advisors viewed it as a significant priority and undertook efforts to process the request. The defense made the request for additional hours *prior* to the Order, and the initial legal-advisor memorandum had been drafted by Mr. Mark Toole. Due to Mr. Toole's disqualification, however, LCDR [REDACTED] drafted new legal advice for this request. AE 332X at 10.

LCDR [REDACTED] joined the Office of the Convening Authority on 2 January 2015 and had not participated in the drafting or consideration of Change 1. As the only legal advisor not named in the Commission's Order, LCDR [REDACTED] assumed all legal-advisor duties for the accused's case during this period. According to LCDR [REDACTED] and Ms. [REDACTED] Legal Administrative Specialist, the defense was aware that LCDR [REDACTED] had assumed the role of legal advisor for the Al-Nashiri case and sent two requests directly to LCDR [REDACTED] on 19 March 2015. Because the defense sent these requests directly to LCDR [REDACTED] and he did not forward them to any other member of the legal-advisor staff, they never appeared on the case -tracker document used by the legal advisors to brief the Convening Authority.

The defense asserts "Mr. Toole continued to ask LCDR [REDACTED] for updates and developments in the *Al-Nashiri* case." AE 332X at 10. Due to LCDR's [REDACTED] relative inexperience in the Office of the Convening Authority, Mr. Toole did interact with LCDR [REDACTED] but he did so only to a limited degree and in a non-substantive manner regarding the defense request for learned counsel to have additional hours. For example, Mr. Toole suggested that LCDR [REDACTED] contact the office's contract administrators to gauge how many hours Mr. Kammen already used in the case. Mr. Toole provided no legal advice and made no recommendations regarding the merit of the defense request. His actions simply were to point LCDR [REDACTED]—a new member of the staff—in the direction of information pertinent to carrying out his duties. LCDR [REDACTED] ultimately recommended approval of the request, and the learned defense counsel received additional funding to work additional hours in defense of the accused.

Mr. Toole also contacted Mr. Jason Foster, DoD OGC, to inquire if urgent defense requests, such as the defense request for additional hours for Mr. Kammen, could be forwarded to Mr. Foster for briefing to the Secretary of Defense. In the absence of a Convening Authority,

it was assumed that the authority to act on defense requests had reverted to the Secretary of Defense, the standing convening authority under the Military Commissions Act when no other convening authority is designated. While LCDR ██████ did forward his documentation on this request to Mr. Foster, no action was taken on the request. In fact, Mr. Foster ultimately informed LCDR ██████ that such requests should not be submitted through Mr. Foster or other members of the DOD OGC. At no point did Mr. Toole express to Mr. Foster any opinions with respect to the merit of this defense request or any other request.

The defense correctly states that LCDR ██████ prepared a binder of all pending matters in the accused's case for the incoming Convening Authority and Legal Advisor. AE 332X at 11. The defense, however, misleadingly states that Mr. Toole reviewed this binder and edited its contents. *Id.* Mr. Toole did not review the substance of the binder; rather, as LCDR ██████ supervisor, he went through the binder in a quality-control manner, ultimately resulting only in the removal of a copy of the Commission's Order, as a separate binder had been created for the new Convening Authority with all documents relevant to AE 332, including AE332U.

B. Following the Appointment of a New Convening Authority and Legal Advisor

To comply with the Commission's Order, DoD OGC identified Mr. Oostburg Sanz and his former legal advisor, Mr. Quinn, as the best candidates to assume the temporary responsibilities of Convening Authority and legal advisor respectively. Neither Mr. Oostburg Sanz nor Mr. Quinn had been disqualified by AE 332U. Mr. Oostburg Sanz, despite having served previously as Convening Authority, had been entirely outside the Office of the Convening Authority since the appointment of Mr. Ary on 30 September 2014. As such, Mr. Oostburg Sanz played no role in the development or adoption of Change 1. Mr. Oostburg Sanz's appointment is

considered temporary, and DOD OGC is considering candidates from outside the Office of the Convening Authority to replace him.

Similarly, Mr. Quinn had been outside the Office of the Convening Authority since 31 October 2014. From 31 October 2014 to 6 April 2015—the date Mr. Quinn returned to the Office of the Convening Authority—Mr. Quinn had relocated to Corpus Christi, Texas, where he had taken a civilian position as General Counsel to the Chief of Naval Air Training. Mr. Quinn resumed duties in the Office of the Convening Authority on 6 April 2015, and he was formally appointed as Legal Advisor on 14 April 2015. Attachment C. Given Mr. Quinn’s departure in late-October 2014, he too played no role in the development or adoption of Change 1. Mr. Quinn’s appointment is considered temporary, having received only a 90-day detail. DOD OGC is considering candidates from outside the Office of the Convening Authority to replace him.

The defense alleges Mr. Quinn “advised Ary on the policies . . . which led to the promulgation of Change I.” AE 332X at 8. This statement is misleading. Mr. Quinn simply conducted a resource analysis of the various branches of the Office of Military Commissions, including the Trial Judiciary, the Office of the Chief Prosecutor, and the Office of the Chief Defense Counsel. This analysis took place well in advance of any substantive discussions related to making military commissions the exclusive duty of military judges or relocating the military judges to Guantanamo Bay.

Mr. Oostburg Sanz and Mr. Quinn have worked diligently to ensure that the Order is followed within the Office of the Convening Authority. Within days of Mr. Quinn’s arrival, the Office of the Convening Authority undertook several steps to comply with the Order. First, the Office of the Convening Authority revamped the comprehensive case tracker used by the legal-advisor staff to organize pending defense requests and Commission orders; the office created a

separate tracker for this case. These separate trackers generally are used by the legal-advisor staff to brief the Convening Authority at weekly meetings.

Since the arrival of Mr. Quinn on 6 April 2015, the Convening Authority bifurcated the meetings—the Convening Authority is briefed on this case outside the presence of other legal advisors and staff members. Indeed, while the Convening Authority and the legal advisors discuss other cases, the case tracker for the Al-Nashiri case is placed face-down on the conference table and not discussed with the general group. Once all other cases have been discussed, the Convening Authority dismisses all legal advisors, with the exception of Mr. Quinn and LCDR [REDACTED] and he then proceeds to discuss matters pertaining to the accused.

Mr. Quinn further directed that all physical and electronic files relating to the Al-Nashiri case be completely and entirely separated from the other cases. Mr. Quinn instructed Ms. [REDACTED] to remove all hard-copy files for the Al-Nashiri case and to relocate those files to a separate filing cabinet. The files were then in close proximity to LCDR [REDACTED] cubicle so that he alone could access the files. With respect to the electronic files, Mr. Quinn directed Ms. [REDACTED] to coordinate with information-technology staff to restrict access to the Al-Nashiri folder. On 8 April 2015, Ms. [REDACTED] contacted Mr. [REDACTED] an Information Technology professional, and she requested that Mr. [REDACTED] “provide access to the Nashiri folder . . . to only Mr. Oostburg, Mr. Quinn, LCDR [REDACTED] SSG [REDACTED] and myself.” Attachment D. Mr. [REDACTED] immediately restricted access to the Al-Nashiri files on both the classified and unclassified systems.

Ms. [REDACTED] in a separate email dated 8 April 2015, requested that Mr. [REDACTED] establish a new email group for the Al-Nashiri legal advisors. Attachment E. Ms. [REDACTED] instructed Mr. [REDACTED] to include only herself, Mr. Quinn, LCDR [REDACTED] and SSG [REDACTED] in the email group to be named “Legal Advisor-Nashiri group.” *Id.* This group would then be distinct from the

regular Legal Advisor's group email. *Id.* On 10 April 2015, Mr. Quinn sent a test message to Colonel Karen Mayberry (Office of the Chief Defense Counsel) using this new email distribution list. Attachment F. Finally, on 10 April 2015, Ms. ██████ requested three other folders containing information relevant to the Al-Nashiri case be restricted to the same individuals named in the previous requests. Attachment G.

On 10 April 2015, to further clarify the Office policy with respect to the Al-Nashiri case, Mr. Quinn sent an email to the entire Office of the Convening Authority stating, “[I]n exercising your respective responsibilities, should you have the need to inform or discuss with the Legal Advisor's Office any issue(s) specifically involving the Nashiri case or the OCP/OCDC Nashiri teams, you are to limit such contact to Ms. ██████ SSGT ██████ Lieutenant Commander ██████ Colonel ██████ or myself.” Attachment H.

The defense incorrectly asserts that during this time, the Al-Nashiri case “continued to be briefed and discussed in group meetings of all of the legal staff—including Mr. Toole and Ms. Adams.” AE 332X at 10. Not a single legal advisor present for these meetings—other than LCDR ██████ supports this assertion. To the extent the Al-Nashiri case was mentioned at all, it was merely a reference to a past action in the Al-Nashiri case that might illuminate present actions in other cases and promote consistency with past practices. No current actions in the Al-Nashiri case were ever discussed in a group setting.

The defense specifically alleges that on 9 April 2015, LCDR ██████ observed Mr. Toole and Mr. Quinn discussing the Commission's Order granting the defense request for an MRI of the accused (AE 340J). AE 332X at 12. On 11 May 2015, in an interview with the prosecution, LCDR ██████ acknowledged that he merely inferred the subject of the conversation given the timing. Neither Mr. Quinn nor Mr. Toole has a specific recollection of this event. Both

individuals, however, steadfastly deny that Mr. Toole ever provided Mr. Quinn with any recommendations or feedback concerning the Commission's Order on the MRI or any other pending action in the Al-Nashiri case. Further, contrary to the defense assertion that Ms. Donna Wilkins emailed the MRI order to only Mr. Toole and Mr. Quinn, the email was sent to Mr. Toole, Mr. Quinn, LCDR [REDACTED] and Colonel [REDACTED] Attachment I.

The defense states Mr. Toole told LCDR [REDACTED] that "[Toole] was still responsible for the case, [and] discussing the case was not proper." AE 332X at 11. In the government's interview of LCDR [REDACTED] however, he denied that Mr. Toole ever made such a comment. Similarly, according to LCDR [REDACTED] the defense assertion that Mr. Quinn "was not troubled by Mr. Toole's continuing involvement" was overstated. *Id.* Mr. Quinn took LCDR [REDACTED] concerns seriously and spoke to Mr. Toole about those concerns.

III. The Removal of LCDR [REDACTED] from his Position in the Office of the Convening Authority

In recognition of the sensitivities of these matters, and for personal privacy reasons, additional underlying facts, supporting documentation, and argument concerning LCDR [REDACTED] removal from the Office of the Convening Authority is contained at Attachment J, which is filed under seal.

6. Argument

I. The Office of the Convening Authority Has Taken Prompt and Responsible Steps To Comply With AE 332 and To Remove Concerns of Actual or Apparent Unlawful Influence

The government takes seriously the defense allegations of continued unlawful influence and has vigorously attempted to ascertain the true facts with respect to the actions in the Office of the Convening Authority. The government's examination has revealed that the Office of the Convening Authority has taken appropriate steps to comply with the Order. The implementation

of these changes leaves the Office of the Convening Authority in compliance with AE 332U and nullifies any concerns about unlawful influence. On 4 March 2015, the Commission found the “Convening Authority did not act in bad faith in making the recommendation” to Change 1 and instead held the Convening Authority acted beyond its “customary, regulatory, and statutory duties.” AE 332U at 20.

The Commission also found the rescission of Change 1 by the Deputy Secretary of Defense (“Deputy Secretary”) helped “purge the taint of unlawful influence.” *Id.* To remove any further taint in the case, the Commission disqualified the “Convening Authority (Mr. Ary) and his staff of legal advisors (Mr. Mark Toole, Ms. Alyssa Adams, LTC Patricia Lewis, CDR Raghav Kotval and CPT Matthew Rich) . . . from taking any further action in this case.” *Id. In toto*, the rescission of Change 1 by the Deputy Secretary, the disqualification and the resignation of the Convening Authority, the disqualification of the named staff of the Convening Authority from decisions related to the accused’s case, the delaying of the start of the April Commission hearing, and the actions taken within the Office of the Convening Authority since the Commission issued its Order, have thoroughly purged any actual or possible apparent unlawful influence on the fairness of this proceeding.

Immediately upon this Commission’s oral order, the named legal advisors still present, Mr. Mark Toole, Ms. Alyssa Adams, LTC Patricia Lewis, and CPT Matthew Rich, removed themselves from involvement with this case, in accordance with the Commission’s Order. During the initial stage of transition to a new Convening Authority and a new Legal Advisor, no action was taken in the case, no decisions were made related to the case, and disqualified personnel made absolutely no recommendations specific to the case. Any involvement by such

persons was completely non-substantive, and was offered and strictly meant as helpful guidance to an inexperienced attorney—LCDR [REDACTED]

Any work done on the case was to address immediate defense counsel needs, such as additional funding for learned counsel; however, given the nascent and unclear structure for how the Office of the Convening Authority would handle any requests during this time period, all requests were put on hold. The only legal advisor at the Office of the Convening Authority who was not excluded by the Order was LCDR [REDACTED] and any interaction with previously excluded legal advisors was to orient and administratively facilitate LCDR [REDACTED] towards the personnel, specifically Mr. Jason Foster at the DOD OGC, who might be able to assist him in fulfilling this role. Even this proved unsuccessful. It was not until the Office of the Convening Authority received a new Convening Authority and a new Legal Advisor that any substantive work was accomplished. For the defense to argue that the legal advisors violated the Commission's Order is for it to fail to recognize the utter lack of substantive work done on this case during this interim period and to ignore the good faith, prompt, and responsible efforts to carry out the Commission's order.

The Commission's order states the new Convening Authority will "seek legal advice from a legal staff outside the Office of Military Commission/Office of the Convening Authority." AE 332U at 21. Clearly the appointment of Mr. Quinn—who was employed with the U.S. Navy in Corpus Christi, Texas, at the time—as Legal Advisor to Mr. Oostberg-Sanz on 14 April 2015 meets the Commission's intent that the Convening Authority receive his legal advice from a legal staff outside the Office of Military Commissions/Office of the Convening Authority, *i.e.*, not one of the disqualified legal advisors. Further, Mr. Quinn was not involved with any aspect of Change 1, the source of the appearance of unlawful influence. That said, the

government does acknowledge that another reading of the language in the Commission's Order is that the Convening Authority should seek legal advice from a legal staff not *presently* in the Office of Military Commission/Office of the Convening Authority—that is, someone not physically co-located in the same space as the Convening Authority's disqualified legal advisors. If the latter was the Commission's intent, surely that is simply a matter of a clarifying order from this Commission, though it should be noted that the location of files and support staff militate in favor of the interpretation reasonably taken by the Office of the Convening Authority.

Furthermore, after the appointment of Mr. Quinn as Legal Advisor to Mr. Oostberg-Sanz, Mr. Quinn led the Office toward even greater reform to ensure robust compliance with this Commission's Order. Beyond the bifurcated meetings, the secure and restricted access to the accused's electronic files, and the clear guidance to appropriate channels of communication both internally and externally, Mr. Quinn established a structure that demonstrates a posture of respect for this Commission's Order in AE 332U.

The defense attempts to portray a different picture and incorrectly asserts during this period that the Al-Nashiri case “continued to be briefed and discussed in group meetings of all of the legal staff—including Mr. Toole and Ms. Adams.” AE 332X at 10. Not a single legal advisor present for these meetings—other than LCDR [REDACTED]—supports this assertion. To the extent the Al-Nashiri case was mentioned at all, it was merely a reference to a past action (totally and completely unrelated to Change 1) in the Al-Nashiri case that might illuminate present actions in other cases and promote consistency with past practices. No current actions in the Al-Nashiri case were ever discussed in a group setting. Instead, the Office as a whole is complying with the Order and no remnants remain that give rise to concern over any continuing appearance of unlawful influence.

II. Complete Circumstances Surrounding the Removal of LCDR [REDACTED] from the Office of the Convening Authority

In recognition of the sensitivities of these matters, and for personal privacy reasons, additional underlying facts, supporting documentation, and argument concerning LCDR [REDACTED] removal from the Office of the Convening Authority is contained at Attachment J, which is filed under seal.

III. The Dismissal of All Charges and Specifications With Prejudice Is an Inappropriate Remedy , Especially Given that the Defense Offered No Factual Assertion of Unlawful Influence

The defense captions its motion as a “renewed motion to dismiss for unlawful influence.” As such, the defense does not appear to be alleging a “new instance” of unlawful influence, but rather urges the Commission to reconsider its remedy to the original finding of unlawful influence, essentially arguing the legal advisors’ non-compliance with the Commission’s Order at AE 332U compels such action. In an abundance of caution, however, the government responds to the possibility that the defense is making a new claim of unlawful influence. The defense carries the initial burden of raising the issue of unlawful influence. *Biagase*, 50 M.J. at 150 (citing *Stombaugh*, 40 M.J. at 213). “At trial, the accused must show facts which, if true, constitute unlawful command influence, and that the alleged unlawful command influence has a logical connection to the court-martial, in terms of its potential to cause unfairness in the proceedings.” *Id.* Only if the defense can show “some evidence” of unlawful command influence, which must be “more than mere allegation or speculation,” does the burden shift to the government. *Id.*

While the defense ignores the above steps, the defense still requests that the Commission order the most severe remedy—dismissal of all charges with prejudice. Dismissing all charges and specifications with prejudice “is a drastic remedy and courts must look to see whether

alternative remedies are available.” *United States v. Harvey*, 64 M.J. 13, 21 (C.A.A.F. 2006) (quoting *Gore*, 60 M.J. at 187); *see also* AE 332U at 20 (stating “[d]ismissal with or without prejudice is a drastic remedy, and not appropriate at this juncture. Lesser measures can be taken to remove the taint of the unlawful influence from this military commission.”).

The defense argument appears to hinge on the assertion that LCDR ██████ was influenced by a disqualified legal advisor, *i.e.*: Mr. Mark Toole. AE 332X at 15. While the defense, beyond conjecture, presents no actual facts of how Mr. Toole influenced LCDR ██████ the real legal deficiency is that LCDR ██████ cannot be the object of unlawful influence. The statute is clear: “No authority convening a military commission under this chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or their functions in the conduct of the proceedings.” 10 U.S.C. § 949b(a). The list of individuals that may be unlawfully influenced does not contemplate an assistant legal advisor to the Convening Authority.

If instead the defense is asserting that there still exists a taint from the former allegation of unlawful influence, the defense misleads this Commission as to the actual steps undertaken by the Office of the Convening Authority in response to the Commission’s Order. As extensively argued above, the Office of the Convening Authority has complied with this Order. These steps and all other actions in compliance with the Commission’s Order remove even the appearance of unlawful influence on this proceeding.

According to its prerogative, the Commission fashioned a specific remedy to preserve the appearance of fairness. AE 332U; *see also United States v. Gore*, 60 M.J. 178, 186 (C.A.A.F. 2004) (finding military judges are not required to take one specific action to remedy unlawful

influence, but instead may employ remedies as necessary to preserve the actual or apparent fairness of the proceeding before them). The appearance of fairness in this proceeding is intact and wholly preserved. The defense fails to acknowledge the corrective impact of the largest and most far-reaching remedy taken by this Commission to purge even the appearance of unfairness, namely the removal of the Convening Authority, even after Change 1 was rescinded. The defense also fails to recognize the numerous and substantial steps identified *supra* taken by the Office of the Convening Authority to remove even the appearance of any remnants of unlawful influence. Any concerns from the Commission or the defense on the role of the current legal advisors still being positioned inside the Office of the Convening Authority may be alleviated with a clarification from this Commission as to who is, and who is not, “outside,” for the purposes of complying fully with this Order.

Instead of asking for clarification, however, the defense requests the dismissal of all charges to send a message to the Office of the Convening Authority and to the general public. AE 332X at 19. No such message is justified or needed. A judge may consider dismissal of charges when (1) the accused would still be prejudiced despite remedial actions, or (2) if no useful purpose would be served by continuing the proceedings. *United States v. Douglas*, 68 M.J. 349, 354 (C.A.A.F. 2010); see also AE 332U at 12-13 (citing *Douglas* and presenting this two-fold examination for why dismissal of charges is not warranted). The defense has not met either test here.

6. Conclusion

The government takes seriously both the admonitions of this Commission in AE 332U and the allegations made by the defense in the instant motion. After conducting a factual inquiry involving LCDR [REDACTED] the legal-advisor staff currently in place at the Office of the Convening

Authority, and DoD OGC, the government confidently asserts that any taint associated with Change 1 has been removed. The Convening Authority has been replaced. The Chief Legal Advisor has been replaced. And the remaining legal advisors disqualified in AE 332U have been removed from any involvement in the accused's case. The Commission, therefore, should deny the defense's renewed motion.

7. Oral Argument

The government requests oral argument.

8. Witnesses and Evidence

In addition to the evidence attached to this motion, including the evidence referenced herein, the government may call the following witnesses:

- A. Ms. Stephanie Flannery
- B. Mr. Michael Quinn
- C. Colonel [REDACTED]
- D. Ms. [REDACTED]
- E. Mr. [REDACTED]
- F. Mr. Mark Toole
- G. Lieutenant Colonel Patricia Lewis
- H. Captain Mathew Rich
- I. Mr. [REDACTED]
- J. Ms. Alyssa Adams

9. Additional Information

The government has no additional information.

10. Attachments

- A. Certificate of Service, dated 22 May 2015.

- B. Government's Proposed Sealing Order.
- C. Mr. Michael Quinn as Acting Legal Advisor.
- D. Email from [REDACTED] dated 8 April 2015 (1).
- E. Email from [REDACTED] dated 8 April 2015 (2).
- F. Email from Mr. Michael Quinn dated 10 April 2015 (1).
- G. Email from [REDACTED] dated 10 April 2015.
- H. Email from Mr. Michael Quinn dated 10 April 2015 (2).
- I. Email from Donna Wilkins dated 10 April 2015.
- J. Factual Assertion and Legal Argument Pertaining to LCDR [REDACTED]
- K. Summary of Officer Inquiry by Colonel [REDACTED] dated 22 April 2015.
- L. Electronic Questionnaires for Investigations Processing and Personnel Screening Interview Questionnaire.
- M. Congressional Inquiry dated 24 April 2015 with Supporting Documentation.
- N. Memorandum by Mr. Quinn Memorializing Meeting with LCDR [REDACTED] dated 28 April 2015.
- O. Memorandum from Mr. Quinn to Fleet Resource and Programs, U.S. Fleet Forces Command dated 29 April 2015.
- P. Temporary Additional Duty Travel Orders for LCDR [REDACTED] dated 27 April 2015.
- Q. Email from LCDR [REDACTED] to BG Mark Martins dated 30 April 2015.

R. Email from LCDR [REDACTED] to BG Mark Martins dated 3 May 2015.

Respectfully submitted,

//s//

Robert C. Moscati
Deputy Chief Prosecutor
Trial Counsel

Maj Winston G. McMillan, USMC
LT Bryan M. Davis, JAGC, USN
LT Paul B. Morris, JAGC, USN
Assistant Trial Counsel

Mark Martins
Chief Prosecutor
Military Commissions

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on the 22nd day of May 2015, I filed AE 332Y, **Government Response To Defense Renewed Motion To Dismiss For Unlawful Influence**, and served a copy on counsel of record.

//s//

Robert C. Moscati
Trial Counsel
Office of the Chief Prosecutor
Office of Military Commissions

ATTACHMENT B

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA

v.

ABD AL RAHIM HUSSAYN
MUHAMMAD AL NASHIRI

AE 332Y

PROPOSED SEALING ORDER

22 MAY 2015

Upon consideration of the Prosecution's request to maintain UNDER SEAL Attachments J, K, L, M, N, O, and P to AE 332Y, and pursuant to the Commission's authority under the Military Commissions Act of 2009, 10 U.S.C. § 948a, *et seq.*, Military Commission Rules of Evidence, and the general supervisory authority of the Commission;

IT IS HEREBY ORDERED that Attachments J, K, L, M, N, O, and P to AE 332Y contains sensitive, personal, and private information and therefore shall be kept UNDER SEAL.

SO ORDERED this ___ day of ___ 2015.

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

ATTACHMENT C

~~FOR OFFICIAL USE ONLY~~



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

APR 14 2015

MEMORANDUM FOR MICHAEL QUINN, COUNSEL TO THE CHIEF OF NAVAL AIR TRAINING

SUBJECT: Appointment as the Acting Legal Advisor to the Convening Authority

Effective April 14, 2015, you are appointed as the Acting Legal Advisor to the Convening Authority (Acting Legal Advisor). As such, you serve in the Office of the Convening Authority and report to the Convening Authority for Military Commissions (Convening Authority).

The duties and responsibilities of the Legal Advisor are set forth in the Manual for Military Commissions and the Regulation for Trial by Military Commission. The Convening Authority shall directly supervise you in the performance of your duties as Acting Legal Advisor, and shall fulfill all performance evaluation responsibilities of you as the Acting Legal Advisor that are normally associated with the function of a direct supervisor.

As Acting Legal Advisor you will inform and coordinate with the Deputy General Counsel (Legal Counsel) of the Department of Defense (DGC (LC)) on matters of law or policy that may require the attention of the DoD General Counsel except those matters of law and policy that impact the Office of the Chief Defense Counsel. For those matters you will inform and coordinate with the Deputy General Counsel for Personnel and Health Policy (DGC (P&HP)) as appropriate.


Stephen W. Preston
General Counsel

cc: .
Convening Authority for MC
DoD, DGC (P&HP)
DoD, DGC (LC)



~~FOR OFFICIAL USE ONLY~~

ATTACHMENT D

[REDACTED] CIV OSD OMC CA (US)

Fr [REDACTED] CIV OSD OMC CA (US)
Sen. Wednesday, April 08, 2015 2:48 PM
To: [REDACTED] CTR WHS EITSD (US)
Subject: limited access
Signed By: [REDACTED]

Sir,

Could you please provide access to the Nashiri folder below to only, Mr. Oostburg, Mr. Quinn, LCDR [REDACTED] SSG [REDACTED] and myself.

[REDACTED]
Thank you.

V/R,
[REDACTED]

[REDACTED]
Executive Assistant to the Convening Authority/Legal Administrative Specialist

Of Military Commissions (OMC) - Convening Authority
[REDACTED]

Office ☎: [REDACTED]

Blackberry ☎: [REDACTED]

Facsimile ☎: [REDACTED]

NIPR: [REDACTED]

SIPR: [REDACTED]

This email communication is intended only for the use of the designated recipient, and may contain attorney-client communication. As such, it is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution, or copying of the message is strictly prohibited. If you have received this transmission in error, please destroy this transmission and provide notification to me of the erroneous transmission immediately.

ATTACHMENT E

CIV OSD OMC CA (US)

Fr: [REDACTED] CIV OSD OMC CA (US)
Sent: Wednesday, April 08, 2015 3:18 PM
To: [REDACTED] CTR (US)
Subject: RE: limited access
Signed By: [REDACTED]

Thank you.

Another item if you could take care of this tomorrow.

We need another email group for all Nashiri filings from other sections. Please create an email group for Mr. Quinn, LCDR [REDACTED] SSG [REDACTED] and myself.

You can name it Legal Advisor-Nashiri group, or words to that affect. Just so we can distinguish the regular LA group and the Nabsiri only LA group.

Thank you.

V/R,
[REDACTED]

[REDACTED]
Executive Assistant to the Convening Authority/Legal Administrative Specialist

Office of Military Commissions (OMC) - Convening Authority
[REDACTED]

Office ☎: [REDACTED]
Blackberry ☎: [REDACTED]
Facsimile ☎: [REDACTED]
NIPR: [REDACTED]
SIPR: [REDACTED]

This email communication is intended only for the use of the designated recipient, and may contain attorney-client communication. As such, it is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution, or copying of the message is strictly prohibited. If you have received this transmission in error, please destroy this transmission and provide notification to me of the erroneous transmission immediately.

-----Original Message-----

From: [REDACTED] CTR (US)
Ser dnesday, April 08, 2015 3:09 PM
To: [REDACTED] CIV OSD OMC CA (US)
Subject: RE: limited access

ATTACHMENT F

Quinn, Michael I CIV OSD OMC CA (US)

F: Quinn, Michael I CIV OSD OMC CA (US)
Se: Friday, April 10, 2015 2:40 PM
To: Martins, Mark S BG USARMY (US); Mayberry, Karen E Col USAF DLSA (US)
Cc: OSD Pentagon OMC List CA Legal Advisor-Nashiri; Moscati, Robert C COL USARMY (US); Little, Billy L Jr CIV (US); Flannery, Stephanie L CIV WHS EM (US); [REDACTED] COL USARMY OSD OGC (US); Kelly, Wendy A CIV OSD OMC CA (US); Wilkins, Donna Lee CIV OSD OMC CA (US); Hill, Laura C CIV OSD OMC CA (US)
Subject: Forwarding of Electronic Correspondence - U.S. v. Nashiri
Signed By: [REDACTED]

General Martins - Colonel Mayberry --

As you are aware, in AE 332U, Judge Spath disqualified Mr. Ary and several of his legal advisors from taking any future action in the case of U.S. v. Nashiri.

To ensure compliance with the Judge's order, a separate, dedicated "OSD Pentagon OMC List CA Legal Advisor-Nashiri" email distribution list has been created for those government and defense counsel, and their support staffs, who are forwarding electronic correspondence in the Nashiri case. Respectfully request that you distribute this new email distribution list - [REDACTED] and can be found in the global - to your respective Nashiri Teams.

The "OSD Pentagon OMC List CA Legal Advisors" email distribution list [REDACTED] remains in place, and counsel and staff forwarding correspondence on all cases other than Nashiri are requested to continue to use that distribution. Utilizing these lists, vice sending to individual Legal Advisors or to the CA (who may not have access to his OSD email account for periods of time), best ensures that correspondence intended for the Legal Advisor's Office - particularly ex parte submissions for expert consultants, witnesses, or other resources - comes to the proper individuals for processing.

I recall that when the Legal Advisors email distribution list was first implemented in May 2014, some defense teams experienced "bounce back" issues, which I believe we resolved. However, if such issues again arise, please report so we may promptly address. Also, when utilizing these lists, senders can expect to receive an acknowledgement of receipt. If that is not occurring, please contact Ms. [REDACTED] at [REDACTED]

Thank you, and V/R, Mike

ATTACHMENT G

[REDACTED] CIV OSD OMC CA (US)

From: [REDACTED] CIV OSD OMC CA (US)
Sent: Friday, April 10, 2015 11:31 AM
To: [REDACTED] CTR WHS EITSD (US)
Subject: Limited Access Request
Signed By: [REDACTED]

[REDACTED]

These three folders also needs to be lockdown. Permission to be given to Mr. Oostburg, Mr. Quinn, LCDR [REDACTED] SSG [REDACTED] and myself.

[REDACTED]

Thank you.

V/R,
[REDACTED]

[REDACTED]
Executive Assistant to the Convening Authority/Legal Administrative Specialist

Office of Military Commissions (OMC) - Convening Authority
[REDACTED]

[REDACTED]

This email communication is intended only for the use of the designated recipient, and may contain attorney-client communication. As such, it is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution, or copying of the message is strictly prohibited. If you have received this transmission in error, please destroy this transmission and provide notification to me of the erroneous transmission immediately.

ATTACHMENT H

Quinn, Michael I CIV OSD OMC CA (US)

F Quinn, Michael I CIV OSD OMC CA (US)
Se. Friday, April 10, 2015 3:34 PM
To: OSD Pentagon OMC List Convening Authority
Subject: U.S. v. Nashiri
Signed By: [REDACTED]

Office of the Convening Authority for Military Commissions / WHS Office of Special Security --

Given a recent ruling (AE 332U) by the military judge in the Nashiri case, several counsel within the Legal Advisor's Office are recused from taking future actions with respect to the Nashiri proceeding.

For All Hands - in exercising your respective responsibilities, should you have the need to inform or discuss with the Legal Advisor's Office any issue(s) specifically involving the Nashiri case or the OCP / OCDC Nashiri teams, you are to limit such contact to Ms. [REDACTED] SSGT [REDACTED] Lieutenant Commander [REDACTED] Colonel [REDACTED] or myself. Issues could include, but are not limited to: travel; translation requests; contractor support issues; security; information technology / information assurance; training requests; civilian or military personnel; facilities/housing; etc.

I request that you be particularly attentive to this requirement when sending electronic communications.

When in doubt, consult with your supervisor, or Ms. Kelly, or Col [REDACTED] or myself.

Thank you.

V/h, v1Q

ATTACHMENT I

Quinn, Michael I CIV OSD OMC CA (US)

From: Wilkins, Donna Lee CIV OSD OMC CA (US)
Sent: Friday, April 10, 2015 11:01 AM
To: Toole, Mark W CIV (US); [REDACTED] COL USARMY OSD OGC (US); Quinn, Michael I CIV OSD OMC CA (US); [REDACTED] LCDR USN OSD OMC CA (US)
Subject: US v. al Nashiri
Attachments: AE 340J - ORDER.PDF
Signed By: [REDACTED]
Importance: High

Please see attached US v Nashiri AE 340J Order Abate All Proceedings dated 10 April 2015.

Donna L. Wilkins
Chief, Office of Court Administration
Office of Military Commissions

Email: [REDACTED]

Voice in VA: [REDACTED]

BB: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Caution: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without the approval from the Office of the DoD General Counsel.

ATTACHMENT J

United States v. Abd Al-Rahim Hussayn Muhammad Al-Nashiri
ISN: 010015

APPELLATE EXHIBIT 332Y

(Pages 40 - 44)

Under Seal

Attachment J

**APPELLATE EXHIBIT 332Y is located in the
original record of trial.**

**POC: Chief, Office of Court Administration
Office of Military Commissions**

ATTACHMENT K

United States v. Abd Al-Rahim Hussayn Muhammad Al-Nashiri
ISN: 010015

APPELLATE EXHIBIT 332Y

(Pages 46 - 50)

Under Seal

Attachment K

**APPELLATE EXHIBIT 332Y is located in the
original record of trial.**

**POC: Chief, Office of Court Administration
Office of Military Commissions**

ATTACHMENT L

United States v. Abd Al-Rahim Hussayn Muhammad Al-Nashiri
ISN: 010015

APPELLATE EXHIBIT 332Y

(Pages 52 - 117)

Under Seal

Attachment L

**APPELLATE EXHIBIT 332Y is located in the
original record of trial.**

**POC: Chief, Office of Court Administration
Office of Military Commissions**

ATTACHMENT M

United States v. Abd Al-Rahim Hussayn Muhammad Al-Nashiri
ISN: 010015

APPELLATE EXHIBIT 332Y

(Pages 119 - 142)

Under Seal

Attachment M

**APPELLATE EXHIBIT 332Y is located in the
original record of trial.**

**POC: Chief, Office of Court Administration
Office of Military Commissions**

ATTACHMENT N

United States v. Abd Al-Rahim Hussayn Muhammad Al-Nashiri
ISN: 010015

APPELLATE EXHIBIT 332Y

(Page 144)

Under Seal

Attachment N

**APPELLATE EXHIBIT 332Y is located in the
original record of trial.**

**POC: Chief, Office of Court Administration
Office of Military Commissions**

ATTACHMENT O

United States v. Abd Al-Rahim Hussayn Muhammad Al-Nashiri
ISN: 010015

APPELLATE EXHIBIT 332Y

(Page 146)

Under Seal

Attachment O

**APPELLATE EXHIBIT 332Y is located in the
original record of trial.**

**POC: Chief, Office of Court Administration
Office of Military Commissions**

ATTACHMENT P

United States v. Abd Al-Rahim Hussayn Muhammad Al-Nashiri
ISN: 010015

APPELLATE EXHIBIT 332Y

(Page 148)

Under Seal

Attachment P

**APPELLATE EXHIBIT 332Y is located in the
original record of trial.**

**POC: Chief, Office of Court Administration
Office of Military Commissions**

ATTACHMENT Q

Martins, Mark S BG USARMY (US)

From: [REDACTED] CDR NR RLSO MidLant [REDACTED]
Sent: Thursday, April 30, 2015 10:40 AM
To: Martins, Mark S BG USARMY (US)
Subject: FOUO // U.S. v. AL NASHIRI
Signed By: [REDACTED]
Importance: High

~~FOR OFFICIAL USE ONLY~~

BG Mark S. Martins, USA
Chief Prosecutor
Office of Military Commissions
[REDACTED]

Greetings, General Martins:

I write to inform you of a pattern of conduct of Mr. Mark L. Toole, Deputy Legal Advisor to the Convening Authority (CA) of the Office of Military Commissions (OMC), from March through April 2015, which, in my opinion, violates the Commission's Order of 4 March 2015 (AE332U). This e-mail is not the proper forum for providing specific details; however, generally, I apprise you as follows:

On or about March, I reported Mr. Toole's conduct to OMC Deputy Director of Operations, COL [REDACTED] USA, and I believe that COL [REDACTED] discussed the matter with Mr. Toole. Thereafter, Mr. Toole continued to engage in a pattern of conduct, which, in my opinion, violates AE332U.

On or about April, after Mr. Michael I. Quinn, reported aboard OMC-CA as Acting Director of Operations and Legal Advisor to the CA, I reported Mr. Toole's conduct to Mr. Quinn and I believe that Mr. Quinn discussed the matter with Mr. Toole. Thereafter, Mr. Toole continued to engage in a pattern of conduct, which, in my opinion, violates AE332U.

Thereafter, on or about April, I reported to Mr. Quinn a second time about Mr. Toole continuing to engage in a pattern of conduct, which, in my opinion, violates AE332U. At that time, Mr. Quinn exhibited agitation toward me for bringing this matter to his attention again, and made several statements to me that were grossly disproportionate to my report of Mr. Toole's conduct.

On or about 29 April 2015, I was summoned to Mr. Quinn's office and told that my wife had filed a "Congressional Inquiry" against me alleging non-support. I informed Mr. Quinn that I have been embroiled in a contentious divorce since 2103, and that my wife's allegation cannot be substantiated because I have a temporary support order [REDACTED] [REDACTED] which requires me only to pay my mortgage in lieu of child support and no spousal support has been ordered because my wife is employed and earns an adequate income. Of course, I am in compliance with the Court's order because I pay the mortgage each month, as ordered. To be sure, the Navy's applicable instruction (MILPERSMAN 1754-030) provides that compliance with a Court's support order constitutes sufficient support to family members.

On or about 29 April 2015, Mr. Quinn dismissed my comments and told me, "You cannot get a TS/SCI with a Congressional Inquiry and we're sending you back to the Navy." (I do not think Mr. Quinn's statement is correct). COL [REDACTED] was present and he took my blackberry, SIPR token, and later, my parking pass. I was told to follow COL

[REDACTED] in our respective vehicles over to Navy OJAG (Code 67) at the Washington Navy Yard. COL [REDACTED] told me that I am being sent TDY to OJAG. Neither I nor my new reporting senior, CAPT [REDACTED] JAGC, USN, [REDACTED] or [REDACTED], have been shown any TDY orders for me. However, CAPT [REDACTED] told me today that he thinks that OMC-CA is in the process of demobilizing me based on his communications with Mr. Quinn.

I believe, based on a number of facts not set forth herein, that Mr. Quinn is using my wife's bogus Congressional Inquiry as a pretext to engage in a prohibited retaliatory personnel action against me in violation of 10 U.S.C. § 1034. I intend to report this entire matter to the DoD IG post haste, but I wanted to inform you beforehand.

I am available at your convenience to be interviewed. I will make myself available to OMC Chief Defense Counsel, Col Mayberry, USAF, in due course. Thank you.

With the Utmost Respect,

[REDACTED]
LCDR JAGC USN

[REDACTED]
Department of the Navy
Office of the Judge Advocate General
Technology Operations & Plans (Code 67)

[REDACTED]
"The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." *Olmstead v. United States*, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting).

~~FOR OFFICIAL USE ONLY~~

ATTACHMENT R

Martins, Mark S BG USARMY (US)

From: [REDACTED] LCDR NR RLSO MidLant [REDACTED]
Sent: Sunday, May 03, 2015 10:23 AM
To: Martins, Mark S BG USARMY (US)
Subject: FW: FOUO // U.S. v. AL NASHIRI

Importance: High

~~FOR OFFICIAL USE ONLY~~

BG Mark S. Martins, USA

Chief Prosecutor

Office of Military Commissions

[REDACTED]

Hello, again, General Martins:

I write to inform you of some additional information regarding the subject of my below e-mail attendant to the above-referenced military commission as follows:

Please note that my below e-mail contains an error as to the date of Wednesday, 29 April 2015. Said date was Tuesday, 28 April 2015, not Wednesday, 29 April.

Please note further that on Thursday, 30 April, OMC-CA finally furnished me with 32-day TDY Orders from OMC-CA to Navy OJAG (Code 67) for the period 28 April to 29 May 2015. Interestingly, the TDY Orders show on their face that OMC-CA initiated the same on Monday, 27 April -- the day before Mr. Quinn told me that OMC-CA had received the "Congressional Inquiry" about me on Tuesday, April 28.

Finally, please note that I received a voicemail message from my OJAG (Code 67) reporting senior, CAPT [REDACTED] left for me on the evening of Friday, 1 May -- within approximately 24 hours of when I sent you my below email -- informing me the my IA Mob Orders to OMC-CA were changed to Demobilization Orders, and that I am to report to my Navy Reserve NOSC in Norfolk, VA tomorrow (Monday, 4 May). I received CAPT [REDACTED] voicemail on the morning of

Saturday, 2 May, because my mobile phone was charging. I returned his call immediately and left a voicemail message. CAPT [REDACTED] returned my call on the afternoon of 2 May, and informed me of the foregoing.

Clearly, OMC-CA is in a rush to remove me from the area to try to render me unavailable to testify about the matters set forth in my below e-mail. Consequently, now, time is of the essence and I cannot afford to wait any longer to make contact with the CDC. I shall be doing so as soon as I am able.

Thank you.

With the Utmost Respect,

[REDACTED]
LCDR JAGC USN

~~FOR OFFICIAL USE ONLY~~

From: [REDACTED] LCDR NR RLSO MidLant
Sent: Thursday, April 30, 2015 10:39 AM
To: [REDACTED]
Subject: FOUO // U.S. v. AL NASHIRI

~~FOR OFFICIAL USE ONLY~~

BG Mark S. Martins, USA
Chief Prosecutor
Office of Military Commissions
[REDACTED]

Greetings, General Martins:

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Thereafter, on or about April, I reported to Mr. Quinn a second time about Mr. Toole continuing to engage in a pattern of conduct, which, in my opinion, violates AE332U. At that time, Mr. Quinn exhibited agitation toward me for bringing this matter to his attention again, and made several statements to me that were grossly disproportionate to my report of Mr. Toole's conduct.

On or about 29 April 2015, I was summoned to Mr. Quinn's office and told that my wife had filed a "Congressional Inquiry" against me alleging non-support. I informed Mr. Quinn that I have been embroiled in a contentious divorce since 2103, and that my wife's allegation cannot be substantiated because I have a temporary support order [REDACTED] which requires me only to pay my mortgage in lieu of child support and no spousal support has been ordered because my wife is employed and earns an adequate income. Of course, I am in compliance with the Court's order because I pay the mortgage each month, as ordered. To be sure, the Navy's applicable instruction (MILPERSMAN 1754-030) provides that compliance with a Court's support order constitutes sufficient support to family members.

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I believe, based on a number of facts not set forth herein, that Mr. Quinn is using my wife's bogus Congressional Inquiry as a pretext to engage in a prohibited retaliatory personnel action against me in violation of 10 U.S.C. § 1034. I intend to report this entire matter to the DoD IG post haste, but I wanted to inform you beforehand.

I am available at your convenience to be interviewed. I will make myself available to OMC Chief Defense Counsel, Col Mayberry, USAF, in due course. Thank you.

With the Utmost Respect,

[REDACTED]
LCDR JAGC USN

[REDACTED]
Department of the Navy
Office of the Judge Advocate General
Technology Operations & Plans (Code 67)

[REDACTED]

"The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." *Olmstead v. United States*, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting).

~~FOR OFFICIAL USE ONLY~~