

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

UNITED STATES OF AMERICA

v.

ABD AL RAHIM HUSSAYN
MUHAMMAD AL NASHIRI

AE 349E

**REVISED
DOCKETING ORDER**
(September 2016 Hearing)

12 August 2016

1. As directed in AE 349, a hearing in this case will take place **7 - 9 September 2016**, at the U.S. Naval Station, Guantanamo Bay, Cuba.¹ The hearing will begin at **0900** on **7 September 2016**.

2. The Accused must be present for the beginning of the session on **7 September 2016** and will be reminded of his right to be present during interlocutory proceedings at his option, in accordance with this Commission's prior written order in AE 099F.²

3. A Rule for Military Commission (R.M.C.) 802 Conference will be held on **6 September 2016 at 1700** in the Deliberation Room on the first floor in AV-34 to discuss the sequence of argument and changes to the Docketing Order.

4. The Commission will receive evidence and hear argument on the following motions during the session:

a. **AE 332X**, Defense Renewed Motion To Dismiss For Unlawful Influence;

b. **AE 332AA**, Defense Motion To Compel Discovery Related To AE 332X;

c. **AE 333**, (Classified) Defense Motion To Dismiss For Violations Of *Brady v. Maryland*, 373 U.S. 83 (1963) And *Giglio v. United States*, 405 U.S. 150 (1972);

d. **AE 335C**, Defense Motion To Compel Witnesses To Testify At The Hearing On AE 335 Defense Motion To Suppress Custodial Statements Made By Mr. Ahmed Mohammed Ahmed Haze (Al-Darbi);

e. **AE 348**, Defense Motion To Abate Proceedings Pending The Restoration Of Commander Brian Mizer To The Defense Team;

¹ AE 349, Docketing Order, dated 23 June 2016.

² AE 099F, Order, Government Motion Regarding Accused's Presence During Commission Proceedings, dated 6 December 2012.

f. **AE 350**, Defense Motion To Abate Proceedings Until Critical Members Of The Defense Team Receive Appropriate Security Clearances And SAP Read-Ons;

g. **AE 351**, Defense Motion To Dismiss Charge IV, Specification 2; Charge V, Overt Act 26; And Charges VII-IX Pursuant To *RJR Nabisco v. European Community*; and

h. **AE 352**, Defense Motion To Dismiss Because The Convening Authority's Dual Judicial And Prosecutorial Responsibilities Violate Due Process, Or In The Alternative To Abate The Proceedings Until The Convening Authority Is Removed From Those Roles.

5. The Commission will also hear argument on the impact of the recent United States Court of Military Commission Review (U.S.C.M.C.R.) decisions in *United States v. Al Nashiri*, No. 14-001 (U.S.C.M.C.R. June 9, 2016) and *United States v. Al Nashiri*, No. 15-002 (U.S.C.M.C.R. July 8, 2016) on the following motions and previously issued orders:

a. **AE 048N**, Government Motion For An Evidentiary Hearing;

b. **AE 049F**, Government Motion For An Evidentiary Hearing;

c. **AE 168G**, Order, Defense Motion To Dismiss Charges VII-IX For Lack Of Jurisdiction Under International Law;

d. **AE 241C**, Order, Defense Motion to Dismiss Charges VII-IX For Lack of Jurisdiction Under International Law;

e. **AE 248B**, Ruling, Defense Motion To Strike Aggravator #1 From Charge IV, Specification 1 For Failure To Charge Facts In Aggravation Under R.M.C. 1004 (C)(1);

f. **AE 248G**, Ruling, Defense Motion To Strike: AE 248C Government Notice Of Bill Of Particulars (Charge IV, Specification 1); and

g. **AE 248S**, Ruling (Corrected Copy), Government Motion To Reconsider AE 248G, ¶ 5, And Allow The Government To Prove The Accused's "Wanton Disregard For Human Life" By Introducing Relevant And Probative Evidence Relating To Foreign Nationals Located On Or Around USS COLE (DDG 67) At The Time Of The Attack.

6. The Commission will also hear argument on the impact of the recent U.S.C.M.C.R. decisions in *United States v. Al Nashiri*, No. 14-001 (U.S.C.M.C.R. June 9, 2016) and *United*

States v. Al Nashiri, No. 15-002 (U.S.C.M.C.R. July 8, 2016) on the following motions

previously ruled moot by the Commission:

a. **AE 234**, Defense Motion To Dismiss Charge VII (Attacking Civilians) For Multiplicity;

b. **AE 235**, Defense Motion To Dismiss Charge VIII (Attacking Civilian Objects) For Multiplicity;

c. **AE 249**, Defense Motion To Strike Aggravator #1 From Charge IV Specification 2 For Failure To Charge Facts In Aggravation Under R.M.C. 1004(c)(1);

d. **AE 250**, Defense Motion To Strike Aggravator #1 From Charge IX For Failure To Charge Facts In Aggravation Under R.M.C. 1004(c)(1);

e. **AE 251**, Defense Motion To Strike Aggravating Factor #1 From Charge IV Specification 2 Based On Duplicity;

f. **AE 252**, Defense Motion To Strike Aggravating Factor #1 From Charge VII Based On Duplicity;

g. **AE 253**, Defense Motion To Strike Aggravating Factor #1 From Charge IX Based On Duplicity;

h. **AE 254**, Defense Motion To Strike Aggravator #4 From Charge IX For Failure To Charge Facts In Aggravation Under R.M.C. 1004(c)(8);

i. **AE 255**, Defense Motion To Strike Aggravator #4 From Charge IV Specification 2 For Failure To Charge Facts In Aggravation Under R.M.C. 1004(c)(8);

j. **AE 258**, Defense Motion To Strike Aggravator #5 From Charge VII For Failure To Charge Facts In Aggravation Under R.M.C. 1004(c)(11);

k. **AE 259**, Defense Motion To Strike Aggravator #5 From Charge IX For Failure To Charge Facts In Aggravation Under R.M.C. 1004(c)(11);

l. **AE 298**, Defense Motion To Dismiss Charge IX Because The Statute Of Limitations Has Run;

m. **AE 300**, Defense Motion To Dismiss Charge VII Because The Statute Of Limitations Has Run; and

n. **AE 301**, Defense Motion To Dismiss Charge VIII Because The Statute Of Limitations Has Run.

7. Counsel should be prepared to argue any other motion for which the briefing cycle has been completed. If either side believes other issues should be addressed, they may request the Commission amend this order.

8. If required, hearings under the provisions of Military Commission Rule of Evidence (M.C.R.E.) 505(h) will be conducted at times to be determined.

So **ORDERED** this 12th day of August, 2016.

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