

## MILITARY COMMISSIONS TRIAL JUDICIARY GUANTANAMO BAY, CUBA

<b>UNITED STATES OF AMERICA</b>  <b>v.</b>  <b>KHALID SHAIKH MOHAMMAD;  WALID MUHAMMAD SALIH  MUBARAK BIN ‘ATTASH;  RAMZI BINALSHIBH; ALI ABDUL AZIZ  ALI; MUSTAFA AHMED ADAM AL  HAWSAWI</b>	<b>AE 478 (GOV Sup)</b>  <b>Government Supplement  To Renewed Motion for a Trial  Scheduling Order</b>  31 July 2017
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**1. Timeliness**

This supplement is timely under the Military Commissions Trial Judiciary Rules of Court and the Manual for Military Commissions because on 24 March 2017, the Military Judge sought answers during oral argument regarding how the U.S. government would provide infrastructure and resources sufficient to hold proceedings, including trial proceedings on the merits, in more than one case at a time at Naval Station Guantanamo Bay, Cuba (NSGB). Those answers are now available. On 28 July 2017, the Military Judge granted the Prosecution leave to supplement. *See* AE 478-9.

**2. Relief Sought**

The Prosecution respectfully requests a trial date of January 2019 and adoption of the trial scheduling sequence set forth below and in the proposed Trial Scheduling Order at Attachment B. The Prosecution continues to anticipate that its case-in-chief will last six to eight weeks.

**3. Burden of Proof**

As the moving party, the Prosecution must demonstrate by a preponderance of the evidence that the requested relief is warranted. R.M.C. 905(c)(1)-(2). This supplement incorporates by reference all of the Prosecution’s previous briefing and argument on the original motion and seeks to meet its burden with additional facts and argument.

#### 4. Facts

The five Accused were jointly arraigned before this Military Commission on 5 May 2012. Eight referred charges allege violations against the laws of war in connection with the conspiracy that culminated in the September 11th, 2001 attacks, in which 2,976 persons were murdered and countless others terrorized. On 12 December 2014, the Commission denied the Prosecution's first request for a Trial Scheduling Order. *See* AE 175F. The Prosecution renewed its request for such an Order on 3 January 2017, seeking that the Military Judge use his authority to set a series of milestones leading to *voir dire* of the panel members beginning in March 2018, with trial on the merits to immediately follow. *See* AE 478. The Commission heard initial oral argument on that request on 24 March 2017. *See* Unofficial/Unauthenticated Transcript (Tr.) at 15452-15501.

At the March 24th session, the Prosecution amended its request by adding 90 days to the AE 478 proposed milestones. This adjustment accounted for the cancellation of proceedings previously scheduled to have occurred in late January 2017 and for the still-ongoing judicial review of classified discovery. The requested commencement of *voir dire* and trial thus became June 2018. At oral argument, the Military Judge focused upon the "practical question" of how three cases—namely the present military commission as well as the separate prosecutions of Abd al Rahim al Nashiri and Hadi al Iraqi, respectively—could be conducted with only one courthouse at NSGB capable of hosting proceedings on the record. Tr. at 15452-15453.

The worldwide pursuit of those who perpetrated the September 11<sup>th</sup>, 2001 attacks required the United States to employ sources and methods of intelligence and counterterrorism that remain sensitive. Although the Prosecution's affirmative case consists entirely of unclassified evidence of guilt, the Defense's oft-expressed intention to place those sources and methods themselves on trial validates the requirement for a courtroom that is certified as a Sensitive Compartmented Information Facility (SCIF) and that is configured to transmit a delayed signal for public observers.

A second and smaller SCIF courthouse capable of accommodating either the Nashiri or Hadi cases would today cost between four and one-half (4.5) and six (6) million dollars to build, implicating military construction (MILCON) laws that require Congressional approval for projects of that size. The expeditionary nature of the legal compound at NSGB affords the Executive Branch some level of flexibility in the compound's maintenance and modernization within existing authorizations and appropriations, but the MILCON process poses a genuine and fundamental constraint on options. That process demands a significant level and breadth of governmental support be established before the Department of Defense may construct a new courthouse facility—an improvement to a military installation having a distinct and exclusive purpose. As of today, the necessary consensus to make the investment of taxpayer dollars posed by a second courthouse does not exist.

Meanwhile, between January 1, 2016 and today, the number of days of actual proceedings held in the current courthouse across five active military commission cases has totaled sixty-four (64), including thirty-five (35) days of proceedings in the present case, twenty (20) days in the Nashiri case, seven (7) days in the Hadi case, and one (1) day each in the Khan and Darbi cases. There have been five hundred and seventy-eight ( $366 + 212 = 578$ ) days in that time period during which the NSGB courthouse could have been used, yielding an 11.1 percent usage rate ( $64/578 = 11.1\%$ ) over the past nineteen (19) months.

Although both the lack of consensus for new construction and the low usage rate of the existing facility preclude a second NSGB courthouse at this time, a modest plan for expansion of the Expeditionary Legal Complex is underway that would meet validated requirements. This expansion involves the purchase and emplacement of a series of trailers and supporting utilities:

- Six 32-foot by 54-foot trailers to provide additional work space for teams;
- One 32-foot by 48-foot trailer to provide additional work space for the Prosecution;
- One 24-foot by 56-foot trailer and one 10-foot by 40-foot trailer to provide additional evidence storage;

- One 12-foot by 30-foot trailer for an additional witness waiting area and two 12-foot by 30-foot trailers for additional administrative use;
- One additional holding cell;
- Additional power transformer and emergency generation; and
- Additional latrines.

A sketch of the planned locations of these trailers and utilities is at Attachment C.<sup>1</sup> Anticipated completion is November 2018.

Existing facilities and plans for lodging and moving prospective and selected members of military commission panels have been re-scrutinized and deemed satisfactory, assuming only one capital military commission is empaneled at a given time. These facilities and plans include temporary surge arrangements during *voir dire*, when it is anticipated that sixty or more officers may be undergoing examination and challenge in a given week, as well as arrangements for any periods of consecutive days when the members may not be needed in close proximity to the courtroom. Intensive planning and coordination has also focused upon witness lodging and travel, with a stateside staging location and surge arrangements for peak periods during trial comprising important facets. Any witnesses who testify remotely, with judicial approval but without agreement by all parties, must travel to the National Capital Region where the Office of Military Commissions now maintains a video-teleconference facility with all requisite capabilities to ensure that full confrontation and compulsory process are achieved. Importantly, panel member and witness planning, while making substantial efforts to isolate these groups from other trial participants as much as reasonably practicable, has recognized that complete physical separation will not be possible on NSGB; accordingly, orders by military judges prohibiting communication and assuring appropriate sequestration would be sought by the Prosecution and are assumed.

During the March 24th oral argument, the Military Judge referred to the scheduled increase in tempo across the three major cases in 2018. Tr. at 15453. Despite the increase in

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<sup>1</sup> The hatched 60-foot by 78-foot rectangle depicted at Attachment C is the location for a proposed-but-unapproved courtroom.



tempo, however, there remain a considerable number of days in 2018 with no proceedings scheduled. Attachment D depicts the combined calendar outlined by the military judges. Of three hundred and sixty-five (365) days in that year, there are one-hundred and eighty-four (184) days during which proceedings are currently scheduled in one or more of the three major cases. Thirty-nine (39) of the one hundred eighty-four (184) scheduled days are presently doublebooked, meaning that two judges have issued scheduling orders for those days:

- |  |   |
|--|---|
| <input type="checkbox"/> 16-19 January | <input type="checkbox"/> 23-27 July       |
| <input type="checkbox"/> 5-9 March     | <input type="checkbox"/> 30 July-3 August |
| <input type="checkbox"/> 9-13 April    | <input type="checkbox"/> 5-9 November     |
| <input type="checkbox"/> 25-29 June    | <input type="checkbox"/> 3-7 December     |

Excluding days during the weeks in 2018 occasioning major religious holidays, there are fiftyeight (58) weekdays in which the courtroom remains unscheduled:

- |   |   |
|---|---|
| <input type="checkbox"/> 2-5 January    | <input type="checkbox"/> 14-18 May          |
| <input type="checkbox"/> 5-9 February   | <input type="checkbox"/> 21-25 May          |
| <input type="checkbox"/> 26-30 March    | <input type="checkbox"/> 28 May-1 June      |
| <input type="checkbox"/> 2-6 April      | <input type="checkbox"/> 4-8 June           |
| <input type="checkbox"/> 23-27 April    | <input type="checkbox"/> 19-21, 23 November |
| <input type="checkbox"/> 30 April-4 May | <input type="checkbox"/> 26-30 November     |

If all thirty-nine (39) double-booked days were eliminated by rescheduling one of the two cases to thirty-nine (39) of the fifty-eight (58) unused weekdays—or some combination of those fiftyeight (58) unused weekdays and the ninety-four (94) available weekend days in 2018—the total days scheduled in all cases together would be two hundred and twenty-three (223). The usage rate would thus be sixty-one percent ( $223/365 = 61\%$ ) counting all weekends and holidays, and 86 percent ( $223/258 = 86\%$ ) excluding weekends and a full week for each of two major religious holidays.<sup>2</sup>

The Military Judge expressed concern that resorting to extended hours in the single courtroom not be permitted to undermine the conduct of an “orderly process,” and that in all

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<sup>2</sup> The week on which Eid al-Fitr falls—11-15 June 2018—is one of the two full weeks excluded in arriving at the 86 percent usage rate. The other week is 24-28 December 2018. The weeks of Ramadan that do not include Eid are excluded from neither the 61 percent nor the 86 percent usage rate.

circumstances the arrangements must “reflect[] the seriousness of what the case is.” Tr. at 15548. Without conceding that military justice proceedings occurring beyond hours of daylight would be disorderly or otherwise lack the seriousness and sobriety that participants are professionally obligated to maintain, the planning factors supporting the requested trial scheduling sequence below and at Attachment B assume that the Military Judge would be able to adjourn no later than 1900 on any given night and usually well before that time. The planning factors also assume that no military judge will schedule proceedings in the courtroom on the same day that another military judge has done so, and that a case already at trial with empaneled members will proceed at least four days a week until completion.

Since the March 24th oral argument, further progress toward the completion of discovery has occurred. On 5 April 2016, the Military Judge issued AE 397F, a Trial Conduct Order, directing the Prosecution to provide certain discovery within ten categories of information regarding the Accuseds’ confinement in the Central Intelligence Agency’s former Rendition, Detention, and Interrogation (RDI) Program. On 30 September 2016 the Prosecution filed AE 397G, a thirty-nine page notice, detailing the extraordinary amount of discovery provided to the Defense to that date and reporting that the United States was in compliance with AE 397F, and with its affirmative discovery obligations more broadly. Most recently, the Military Judge has finished his review of large compilations of additional classified materials, has approved government requests for substitutes, and has issued protective orders regarding the material to be produced. As of today, 13,346 pages of those approved substitutes have been provided to the Defense, comprising more than ninety-nine percent (99%) of the material encompassed by AE 397F. The remaining small amounts consist of material implicated by ongoing and expected litigation.

The Prosecution adopts and incorporates all other facts that remain pertinent from its motion in AE 478. For instance, at least one victim family member has passed away since AE 478 was filed on 3 January 3, 2017, while others (including potential witnesses) have

experienced continuing health challenges and often despair that they will not live to see justice done.

## **5. Law and Argument**

It is beyond cavil that, upon being properly detailed, the military judge is the presiding officer in a military commission. 10 U.S.C. § 948j(a). The military judge is responsible for ensuring that military commission proceedings are conducted in a fair and orderly manner, without unnecessary delay or waste of time or resources. R.M.C. 801(a) Discussion. The judge shall “[d]etermine the time . . . for each session of a commission,” R.M.C. 801(a)(1), and “[e]nsure that the dignity and decorum of the proceedings are maintained.” R.M.C. 801(a)(2). Within the framework established by the Military Commissions Act (10 U.S.C. § 948a et seq., as amended), and the rules duly promulgated by the Secretary of Defense pursuant to that Act, the military judge is to prescribe the manner and order in which the proceedings may take place, including when and in what order motions will be litigated, and the time limits for argument. R.M.C. 801(a)(3) Discussion.

It is equally unassailable that what matters most about a legal system is not the grandeur of the physical surroundings or the trappings of the courthouse, but rather the wisdom of the court and the quality of its justice. Austere locations are nothing new to American civilian judges, advocates, and juries, nor to military practitioners, and the commitment by all oath-taking participants to faithfully and impartially carry out their solemn duties according to the evidence, the law, and the dictates of their conscience remains the most important guarantor of fairness. This is well known to the Military Judge, who has tried cases in theaters of armed conflict. While taking seriously the genuine needs of all to fulfill their professional responsibilities, the focus of these proceedings must remain on determining the guilt or innocence of the accused and on arriving at reasoned moral judgments about the appropriate punishments of those who may be found guilty, not on specific physical accommodations. And while time must be allocated for the adversarial process to address the conspiracy and other charges and various theories of

defense, at some point that process must also move forward. The time has come to do so, and laws passed and implemented by the duly elected branches of government dictate that the place of trial will be in expeditionary rather than permanent facilities on NSGB. This venue's limitations and modest characteristics impose legitimate constraints without compromising justice.

Therefore, the Military Judge should coordinate with the Nashiri and Hadi case judges so as to manage effectively the thirty-nine (39) days in which the courtroom is currently doublebooked.<sup>3</sup> This can be done by utilizing the fifty-eight (58) unused weekdays in 2018 or some combination of the fifty-eight (58) unused weekdays and the ninety-four (94) weekend days. Note that the Prosecution also does not object to the military judges resorting to work during the two major religious holiday weeks, as the business before the Commission is every bit as serious as that carried out 365 days a year by those who are deployed overseas.

Starting sometime in November 2018, it will be practicable to conduct proceedings in two cases during the same week in view of the added office and workspace for the parties that will be available. Without requiring any two cases to utilize the courtroom in the same day, a four-days-in, three-days-out schedule for one case and a four-days-out, three-days-in schedule for the other would provide additional flexibility and even would allow trial on the merits or sentencing to occur in one case while permitting forward movement in another on remaining pretrial matters. Such a four-day-three-day arrangement could then be utilized as necessary throughout 2019.

Within these parameters for more fully utilizing the existing courthouse, the Prosecution thus urges the Commission to adopt the following schedule,<sup>4</sup> here adjusted to account for the further delays directed by the Military Judge since the March 24th oral argument:

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<sup>3</sup> Five (5) of these double-booked days in the courthouse—namely 25-29 June 2018—do not involve the present case, but rather require de-confliction as between the Nashiri and Hadi commissions. The remaining thirty-four (34) double-booked days involve the present commission and Nashiri (19 days) and Hadi (15 days).

<sup>4</sup> These dates assume that all time is excludable for purposes of R.M.C. 707. The Prosecution stands ready to proceed to trial at any time should the Accused so request.



- As many as practicable of the interlocutory matters presently on the docket should be addressed during the week of 21-25 August 2017.
- All remaining Defense “Legal Motions” (including any challenges to jurisdiction, the death penalty, per se, or the capital sentencing scheme set forth by the Rules for Military Commission) shall be filed no later than 22 September 2017.
- Motions sessions to argue remaining “Legal Motions”—as well as take evidence in support of such motions—shall be scheduled for 16-27 October 2017.
- Final Discovery shall be provided by both parties by 15 November 2017 absent good cause shown (and recognizing the Prosecution’s continuing duty to provide exculpatory information).
- Witness Lists from both parties, including the identification of all experts that may testify, their Curriculum Vitae, and any expert reports they have generated or otherwise would be relying on for their testimony, shall be provided by 15 November 2017.
- Notice of hearsay the Defense intends to offer pursuant to M.C.R.E. 803(b)(2) shall be provided by 15 November 2017.
- Notice of Defense intent to offer the defense of alibi or lack of mental responsibility, or its intent to introduce expert testimony as to the Accused’s mental condition pursuant R.M.C. 701(g)(2), shall be provided by 15 November 2017.
- Notice of evidence upon which the Prosecution intends to rely on pursuant to M.C.R.E. 404(b) shall be provided by 15 November 2017.
- Completion of all Defense expert testing relating to the Accused’s mental condition, rebuttal expert testing by the Prosecution, and exchange of reports resulting from such testing, shall be completed and provided to the respective parties by 1 December 2017.
- All outstanding Defense “Discovery Motions” shall be filed by 1 December 2017.
- Motions sessions to argue remaining “Discovery Motions” shall be scheduled for 2-12 January 2018 (this envisions that the Military Judge use the un-booked first week of January rather than the third week, which is presently double-booked with the Nashiri case).
- All “Evidentiary Motions,” to include all motions to suppress and motions to preadmit, shall be filed by 2 March 2018.

- Litigation of all remaining evidentiary motions, including presentation of evidence and oral argument, and remaining litigation regarding any challenges to the jurisdictional requirement of alien unprivileged belligerent status shall be scheduled for 26 Mar-6 Apr 2018 (this envisions shifting the currently scheduled 26 Feb-9 Mar session to the right four weeks) and for 7-11 May 2018.
- Any remaining litigation shall take place in the unused weeks of 14-18 May, 21-25 May, 28 May-1 Jun, and 4-8 Jun 2018 as necessary.
- Proposed questionnaires to be provided to potential members, to include questions relating to pretrial publicity and capital punishment, shall be filed by 15 October 2018, and a session 26-30 November 2018 will be used to arrive at the final questionnaire.
- *Voir Dire* of the members shall commence on 7 January 2019, with trial to immediately follow.

## **6. Conclusion**

For the foregoing reasons, the Commission should issue the Trial Scheduling Order at Attachment B.

## **7. Oral Argument**

The Prosecution does not request oral argument on the Motion, but if the Defense is granted argument, the Prosecution requests an opportunity to be heard.

## **8. Witnesses and Evidence**

The Prosecution does not request witnesses on this issue.

## **9. Certificate of Conference.**

On 26 July 2017, the Prosecution consulted with the Defense regarding what became AE 478-8, the Prosecution's motion seeking leave to file this supplement, as well as regarding this supplement itself. Counsel for Messrs. Mohammad and Binalshibh did not respond within the required time. Counsel for Mr. Ali did not oppose the granting of leave to the Prosecution to file a supplement but do oppose the relief requested in the base motion.

On 27 July 2017, at 1:24 AM, counsel for Mr. Bin 'Attash stated:

The Prosecution has failed to provide the Commission realistic trial scheduling since the arraignment when they suggested a trial date of July 2012. It is July 2017 and the Prosecution has yet to fulfill their discovery obligations, obligations that would allow

defense counsel to investigate matters alleged by the prosecution; any attempts by the Prosecution to impose deadlines on the defense, while ignoring their own obligations, are uninformed and disingenuous. Mr. bin 'Atash objects to such attempts to curtail his right to present a defense.

On 28 July 2017, counsel for Mr. Hawsawi stated:

In light of your intention to file a motion seeking an extension of time regarding the Military Judge's ruling in 396(g), we are unable to take a position at this time and will revisit the issue after reviewing the prosecution's new proposed timelines.

**10. Additional Information**

At this time, the Prosecution does not offer additional information.

**11. Attachments**

- A. Certificate of Service, dated 31 July 2017.
- B. Draft Proposed Trial Scheduling Order.
- C. ELC Expansion and Maintenance Design Sketch.
- D. Military Commission Sessions Currently Scheduled June 2017-May 2019.

Respectfully submitted,

\_\_\_\_\_  
//s//  
Clay Trivett  
Managing Trial Counsel

Edward Ryan  
Trial Counsel

Jeffrey Groharing  
Trial Counsel

Robert Swann  
Trial Counsel

Nicole Tate  
Assistant Trial Counsel

Christopher Dykstra

Major, USAF  
Assistant Trial Counsel

Mark Martins  
Chief Prosecutor  
Military Commissions

# ATTACHMENT A



**CERTIFICATE OF SERVICE**

I certify that on the 31st day of July 2017, I filed AE 478 (GOV Sup), Government Supplement To Renewed Motion for a Trial Scheduling Order, with the Office of Military Commissions Trial Judiciary, and I served a copy on counsel of record.

//s//

Clay Trivett  
Managing Trial Counsel

# ATTACHMENT B

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

**UNITED STATES OF AMERICA**

v.

**KHALID SHAIKH MOHAMMAD;  
WALID MUHAMMAD SALIH  
MUBARAK BIN 'ATTASH;  
RAMZI BINALSHIBH;  
ALI ABDUL AZIZ ALI;  
MUSTAFA AHMED ADAM  
AL HAWSAWI**

**AE 478\_**

**ORDER**

Trial Scheduling Order

\_\_ July 2017

1. On 12 December 2014, the Commission denied the Prosecution's first request for a Trial Scheduling Order.<sup>1</sup> In denying its request, the Commission found that the request for a trial schedule was not within the realm of possibility due to delays involved with the Emergency Joint Defense Motion to Abate Proceedings and Inquire into Existence of Conflict of Interest Burdening Counsel's Representation of Accused (AE 292); the Government Motion For R.M.C. 909 Hearing in April 2014 Regarding Mr. Binalshibh's Capacity to Stand Trial By Military Commission (AE 152J); and, the Emergency Defense Motion To Order the Cessation of External Use of Sounds and Vibrations to Interfere with Mr. Binalshibh's Confinement (AE 152).<sup>2</sup>
2. On 3 January 2017, the Prosecution renewed its request for a Trial Scheduling Order, asking the Commission to set a series of milestones leading to *voir dire* of the panel members beginning in March 2018, with trial on the merits to immediately follow.<sup>3</sup> During oral argument, the

<sup>1</sup> Order, Government Motion For a Trial Scheduling Order and Notice of Status of Discovery, 12 December 2014 (AE 175F).

<sup>2</sup> *Id.* at 2-3.

<sup>3</sup> Government Renewed Motion For a Trial Scheduling Order, 3 January 2017 (AE 487(GOV)).

Prosecution amended its request by adding 90 days to the dates originally proposed in AE 478.<sup>4</sup> Also during oral argument, the Military Judge directed the Prosecution to consider the “practical question” of how three cases—namely the present military commission as well as the separate prosecutions of Abd al Rahim al Nashiri and Hadi al Iraqi, respectively—could be conducted with only one courthouse at Naval Station Guantanamo Bay, Cuba (“NSGB”) capable of hosting proceedings on the record.<sup>5</sup> In its written supplement to AE 478, the Prosecution notified the Commission of Government plans to construct at least twelve additional support facilities, with an estimated completion date of November 2018, and summarized other planning and coordination in support of trial proceedings. Accordingly, the Prosecution asked for commencement of *voir dire* in January 2019, followed immediately by trial.<sup>6</sup> The Prosecution argued that fiscal and legal constraints prevent the construction of another courtroom, but that the additional planned facilities, in conjunction with scheduling modifications and coordination, will support their proposed trial milestones. Upon review of the evidence and arguments of the parties, the Commission finds that there are no longer any impediments to imposing the following order.

3. **ORDER:** The Commission orders:

a. On 21-25 August 2017, sessions will take place in this case to receive evidence and hear argument on interlocutory matters presently on the docket at US Naval Station, Guantanamo Bay, Cuba;

b. No later than 22 September 2017, the parties will file all “Legal Motions” (including any challenges to jurisdiction, the death penalty, per se, or the capital sentencing scheme set forth by the Rules for Military Commissions);

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<sup>4</sup> See Unofficial/Unauthenticated Transcript (“Tr.”) at 15452-15501 (24 Mar 2017).

<sup>5</sup> Tr. at 15452-15453.

<sup>6</sup> See Government Supplement to Renewed Motion for Trial Scheduling Order, 31 July 2017 (AE 478K).



c. On 16-27 October 2017, sessions will take place in this case to receive evidence and hear argument on all “Legal Motions” at NSGB;

d. No later than 15 November 2017, the parties will provide all discovery absent good cause shown (and recognizing the Prosecution’s continuing duty to provide exculpatory information);

e. No later than 15 November 2017, the parties will provide complete witness lists, including the identification of all experts that may testify, their Curriculum Vitae, and any expert reports they have generated or otherwise would be relying on for their testimony;

f. No later than 15 November 2017, the parties will provide notice of hearsay they intend to offer pursuant to M.C.R.E. 803(b)(2);

g. No later than 15 November 2017, the Defense will provide notice of intent to offer the defense of alibi or lack of mental responsibility, or its intent to introduce expert testimony as to the Accused’s mental condition pursuant to R.M.C. 701(g)(2);

h. No later than 15 November 2017, the Prosecution will provide notice of evidence upon which the government intends to rely pursuant to M.C.R.E. 404(b);

i. No later than 1 December 2017, Defense expert testing relating to the Accused’s mental condition, rebuttal expert testing by the Prosecution, and exchange of reports resulting from such testing, shall be completed and provided to the respective parties;

j. No later than 1 December 2017, the parties will file all “Discovery Motions”;

k. On 2-12 January 2018, sessions will take place in this case to receive evidence and hear argument on all “Discovery Motions” at NSGB;

l. No later than 2 March 2018, the parties will file all “Evidentiary Motions,” to include all motions to suppress and motions to pre-admit;

m. On 26 Mar-6 Apr 2018 and 7-11 May 2018, sessions will take place in this case to receive evidence and hear argument on all remaining motions;

n. No later than 15 October 2018, the parties will file proposed questionnaires to be provided to potential members, to include questions relating to pretrial publicity and capital punishment;

o. On 26-30 November 2018, sessions will take place to finalize member questionnaires and address outstanding pretrial issues;

p. *Voir Dire* of the members will commence on 7 January 2019, with trial to immediately follow.

q. All accused will be present during the first day of the first R.M.C. 803 session of each period at NSGB at which the Commission will be addressing interlocutory matters. Upon



recording their understanding of their right to be present, the existing procedure for waiving that right as to pre-trial proceedings will be in effect unless otherwise ordered by the Commission. Beginning with *voir dire*, all accused will be present for all R.M.C. sessions of the Commission unless in the rare case that the Commission orders otherwise.

r. All periods of delay from 5 May 2012 until assembly of the Commission for trial on the merits in January 2019 are excludable under R.M.C. 707 and in the interests of justice.

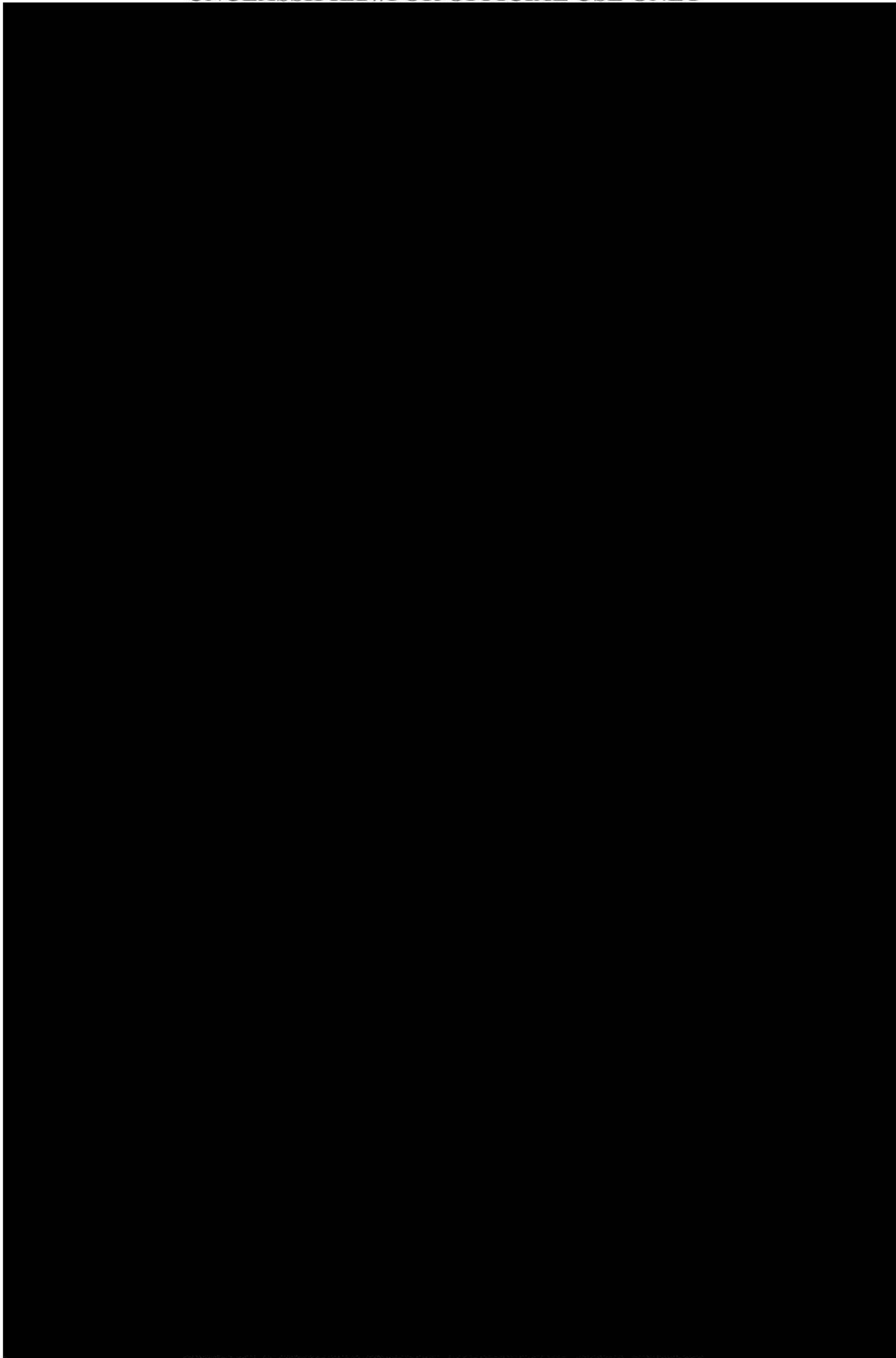
SO ORDERED, this \_\_\_ day of August, 2017.

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JAMES L. POHL  
COL, JA, USA  
Military Judge

DRAFT ORDER / GOVERNMENT / 31/07/17

# ATTACHMENT C



# ATTACHMENT D

**ATTACHMENT D—CURRENTLY SCHEDULED SESSIONS**

NASHIRI							KSM ET AL.							HADI							OMC FLIGHT							Fed Holiday							Eid al-Fitr							Khan							Darbi																																																														
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