

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

UNITED STATES OF AMERICA

v.

**KHALID SHAIKH MOHAMMAD,
WALID MUHAMMAD SALIH
MUBARAK BIN ‘ATTASH,
RAMZI BIN AL SHIBH,
ALI ABDUL AZIZ ALI,
MUSTAFA AHMED ADAM
AL HAWSAWI**

AE 502ZZZ

TRIAL CONDUCT ORDER

**Defense Motion for Advance Production
of R.M.C. 914 Statements for Government
Witnesses Identified in AE 502X**

8 March 2018

1. Procedural History.

a. On 6 November 2017, Mr. Ali (a.k.a. al Baluchi), pursuant to Rule for Military Commissions (R.M.C.) 914, moved¹ the Commission to compel the Prosecution to produce statements by four witnesses² identified in AE 502X (GOV)³ relating to their testimony no later than (30) days prior to their testimony. The Defense requested oral argument.

b. On 20 November 2017, the Prosecution responded,⁴ requesting the Commission deny this relief, arguing it was inconsistent with the plain meaning of R.M.C. 914. The Prosecution also averred it was in the process of providing the witness statements to the Defense in advance of their testimony.

c. On 8 January 2018, the parties argued the matter before the Commission.⁵ Following oral argument, the Commission directed Counsel for Mr. Ali to submit a proposed order to address the

¹ AE 502MM (AAA), Defense Motion for Advance Production Of R.M.C. 914 Statements for Government Witnesses Identified in AE 502X, filed 6 November 2017.

² The witnesses identified by the Government were Special Agent James N. Fitzgerald, Federal Bureau of Investigation (FBI); Special Agent Abigail L. Perkins, FBI, Special Agent James F. Hodgson, Department of Defense (DoD) Terrorism and Criminal Trial Division; and Heather Williams, Section Chief of Records Services, National Security Records Verification Directorate, U.S. Department of Homeland Security.

³ AE 502X (GOV), Government Updated Notice Of Witnesses Demonstrating Personal Jurisdiction over the Accused, filed 28 September 2017.

⁴ AE 502RR (GOV), Government Response To Defense Motion to Advance Production of R.M.C. 914 Statements for Government Witnesses Identified in AE 502X, filed 20 November 2017.

⁵ Unofficial/Unauthenticated Transcript of *Khalid Shaikh Mohammad et al.* Hearing Dated 8 January 2018 from 9:03 AM to 11:57 AM at pp.18349-18371.

issue raised.⁶ On 29 January 2018, counsel for Mr. Ali filed AE 502RRR (AAA)⁷ which contained a draft order⁸ as directed by the Commission. The draft order addressed advanced production of statements by Special Agents Fitzgerald and Perkins. On 26 February 2018, additional oral argument was held regarding the proposed draft order.⁹

2. Order.

a. The Prosecution shall provide the Defense all statements made by Special Agent Perkins, Special Agent Fitzgerald, or any other witness testifying for the Prosecution regarding personal jurisdiction over the Accused. Statements include handwritten notes, email communications, cables, telegrams, or other electronically distributed statements, signed or otherwise adopted or approved by the witness that is known to the Prosecution or in the exercise of due diligence may become known to the Prosecution regarding any subject matter about which the witness will testify. Absent a showing of good cause, the Prosecution shall provide such statements not later than **thirty (30) calendar days** prior to the expected date of the relevant witness's testimony.

b. The Defense will produce all statements [as defined by R.M.C. 914] of witnesses testifying for the Defense regarding issues raised in AE 502 to the Prosecution not later than **thirty (30) calendar days** prior to the expected date of the relevant witness's testimony.

So **ORDERED** this 8th day of March, 2018.

//s//
JAMES L. POHL
COL, JA, USA
Military Judge

⁶ *Id.* at p.18367.

⁷ AE 502RRR (AAA), Mr. al Baluchi's Submission of a Draft Order to Advance Production of R.M.C. 914 Material Prior to Direct Examination, filed 29 January 2018.

⁸ *Id.* at Attachment A, pp. 3-9.

⁹ Unofficial/Unauthenticated Transcript of *Khalid Shaikh Mohammad et al.* Hearing Dated 26 February 2018 from 9:00 AM to 14:57 AM at pp.18835-18846.