

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

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**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 524LLL**

**RULING**

**Government Motion**  
to Reconsider and Clarify AE 524LL, Ruling

**3 April 2019**

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**1. Procedural History.**

a. This Ruling incorporates by reference ¶¶ 1.a. to 1.aa. of the Commission’s Ruling in AE 524LL,<sup>1</sup> which set forth the procedural history of the AE 524 motion series through 17 August 2018.

b. On 17 August 2018, the Commission granted the Government’s motion to implement Protective Order #4 (PO #4),<sup>2</sup> as modified by the Commission, which placed limitations on the Defense in contacting, interviewing, and investigating potential Central Intelligence Agency (CIA) witnesses whose identity or participation in the CIA’s Rendition, Detention, and Interrogation (RDI) Program is classified.<sup>3</sup>

c. At the same time, the Commission found that the extensive discovery provided by the Government regarding the RDI program,<sup>4</sup> the extensive information about the RDI program available

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<sup>1</sup> AE 524LL Ruling, Mr. al Baluchi’s Motion to Dismiss, or in the Alternative, to Compel the Government to Produce Witnesses for Interview Government Notice of Proposed Protective Order, dated 17 August 2018.

<sup>2</sup> AE 524MM, Protective Order #4, Defense Access to Current and Former CIA Employees and Contractors, dated 17 August 2018.

<sup>3</sup> AE 524LL at p. 36.

<sup>4</sup> See, e.g., AE 542J Order, Government Motion to Request Substitutions and Other Relief Regarding Classified Continuing and Trial Discovery, dated 26 July 2018; AE 308RRRR Order, Government Motion to Request Substitutions and Other Relief from Ordered Discovery of Classified Information So As to Comply With Paragraphs 2.c. and 2.h. of AE 397, dated 31 August 2017; AE 308OOOO/AE 497B Order, Government Motion to Request Substitutions and Other Relief from Ordered Discovery of Classified Information So As to Comply With Paragraphs 2.b., 2.c., 2.e., 2.h., and 2.j. of AE 397 and Defense Motion to Compel Production of Durham Investigation Documents, dated 17 July 2017; AE 308MMMM Order, Government Motion to Request Substitutions and other Relief Regarding Classified Information Responsive to Paragraphs 2.b, c, e, h, and j of the Commission’s Ten-

in open sources, the Government's offer to stipulate to "verifiable facts regarding the Accused's involvement and treatment within the CIA's former RDI program," and witness interviews of CIA persons who consent to a Defense interview pursuant to PO #4: (1) will provide the Defense with substantially the same ability to investigate, prepare, and litigate its mitigation case; and (2) will not provide the Defense with substantially the same ability to investigate, prepare, and litigate motions to suppress the Federal Bureau of Investigation (FBI) Clean Team Statements. Specifically, the Commission found PO #4 will not allow the Defense to develop the particularity and nuance necessary to present a rich and vivid account of the 3-4 year period in CIA custody the Defense

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Category Construct, dated 13 June 2017; AE 308LLLL Order, Government Motion to Request Substitutions and Other Relief from Classified Information Responsive to Paragraph 2.c. of the Commission's Ten-Category Construct, dated 7 June 2017; AE 308III Order, Government Motion to Request Substitutions and Other Relief From Classified Information Responsive to Paragraph 2 h. of The Commission's Ten-Category Construct, dated 19 May 2017; AE 308HHHH Order, Government Amendment to Government Motion to Request Substitutions and other Relief Regarding Classified Information Responsive to Paragraphs 2.d., 2 f., and 2.g. of the Commission's Ten-Category Construct, dated 19 May 2017; AE 308CCCC Order, Government Motion to Request Substitutions and Other Relief From Classified Information Responsive to Paragraph 2.h. of The Commissions Ten Category Construct, dated 19 April 2017; AE 308BBBB Ruling, Government Motion to Request Substitutions and other Relief from Classified Information Responsive To Paragraph 2 h. Of The Commissions Ten Category Construct, dated 19 April 2017; AE 308AAAA Order, Government Motion To Request Substitutions And Other Relief From Classified Information Responsive To Paragraph 2.h Of The Commission's Ten-Category Construct, dated 19 April 2017; AE 308VVV CORRECTED Order, Government Motion To Request Substitutions And Other Relief From Classified Information Responsive To Paragraph 2.h of the Commission's Ten-Category Construct, dated 6 March 2017; AE 308NNN Order, Government Motion To Request Substitutions And Other Relief From Classified Information Responsive To Paragraph 2.h. Of The Commission's Ten-Category Construct, dated 18 January 2017; AE 308KKK Order, Government Motion To Request Substitutions And Other Relief From Classified Information Responsive To Paragraph 2h Of The Commission's Ten-Category Construct, dated 17 January 2017; AE 308JJJ Order, Government Motion To Request Substitutions And Other Relief From Ordered Discovery Of Classified Information Responsive To Paragraphs 13.i. And 13.j. Of The Al Nashiri Ten-Category Construct, dated 17 January 2017; AE 308III Order, Government Motion To Request Substitutions And Other Relief From Ordered Discovery Of Classified Information Responsive To Paragraphs 13.e. Of the Al Nashiri Ten-Category Construct, dated 12 January 2017; AE 308HHH (Corrected Copy) Ruling, Government Motion To Request Substitutions And Other Relief From Classified Information Responsive To Paragraph 2h Of The Commissions Ten Category Construct, dated 12 January 2017; AE 308GGG Ruling, Government Motion And Memorandum For A Protective Order Pursuant to the Military Commissions Act of 2009, 10 U.S.C § 949-4, § 949-6 and M.C.R.E. 505, dated 12 January 2017; AE 308BBB (Corrected Copy) Ruling, Government Motion To Request Substitutions And Other Relief From Classified Information Responsive To Paragraph 2h Of The Commissions Ten Category Construct, dated 3 January 2017; AE 308AAA (Corrected Copy) Ruling, Government Motion To Request Substitutions And Other Relief From Classified Information Responsive To Paragraph 2.h. Of The Commissions Ten Category Construct, dated 3 January 2017; AE 308ZZ (Corrected Copy) Ruling, Government Motion To Request Substitutions And Other Relief From Classified Information Responsive To Paragraph 2h Of The Commissions Ten Category Construct, dated 29 December 2016; AE 308V Order, Government Motion To Request Substitutions And Other Relief from Ordered Discovery Of Classified Information Responsive To Paragraphs 13.a. and 13.b. Of The Al Nashiri Ten-Category Construct, dated 4 August 2016.

alleges constituted coercion. To provide the Defense with substantially the same ability to make a defense as would discovery of or access to the specific classified information, the Commission precluded the Government from introducing any FBI Clean Team Statement from any of the Accused for any purpose.

d. On 22 August 2018 in AE 524NN (GOV), the Government moved<sup>5</sup> the Commission to clarify and reconsider its Ruling in AE 524LL. The Government requested the Commission clarify its findings of fact by answering the following six questions:<sup>6</sup>

1. What specific classified information is the Defense unable to access by operation of the 16 March 2018 Draft Protective Order?
2. What specific classified information is the Defense unable to access by operation of Protective Order #4?
3. How does Protective Order #4 fail to provide the Defense with substantially the same ability to make a defense as would discovery of or access to the specific classified information?
4. [With respect to findings made by the Commission in AE 524LL at 26-27] Should the Commission's ruling be interpreted to mean that in the absence of the Commission's *sua sponte* suppression of the statements made by the Accused to the FBI, these same findings apply to Protective Order #4? If not, which findings apply to Protective Order #4?
5. What authority does Military Judge rely upon to rule out use of statements of Accused "for any purpose?"
6. If Protective Order #4 is withdrawn by the Military Judge, how would that affect the Military Judge's ruling that the statements may not be used for any purpose?

The Government also argued that the Commission's Ruling contained instances of clear error and, if left unchanged, would result in a manifest injustice.<sup>7</sup>

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<sup>5</sup> AE 524NN (GOV), Government Motion To Reconsider and Clarify AE 524LL, Ruling, filed 22 August 2018.

<sup>6</sup> *Id.* at pp. 12-13.

<sup>7</sup> *Id.* at pp. 1-2 (citing, e.g., *Foster v. Sedgwick Claims Mgmt. Servs.*, 842 F.3d 721, 735 (D.C. Cir. 2016); *Dyson v. Dist. of Columbia*, 710 F.3d 415, 420 (D.C. Cir. 2013); *Nat'l Ctr. for Mfg. Scis. v. Dep't of Defense*, 199 F.3d 507, 511 (D.C. Cir. 2000); and *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996).)

e. On 26 September 2018, Messrs. Mohammad,<sup>8</sup> bin ‘Attash,<sup>9</sup> bin al Shibh,<sup>10</sup> and Ali (a.k.a. al Baluchi)<sup>11</sup> responded to the Government’s motion for clarification and reconsideration. The Defense responses generally argued that the Government’s motion for clarification had no basis in law and reconsideration was unwarranted because there was no change in controlling law, new facts, extraordinary circumstances, or resulting manifest injustice. Mr. Ali also argued in his response, AE 524RR (AAA), that PO #4 did not, in fact, put the Defense in the same position because the process it commands has impeded (or “chilled”) witness cooperation with Defense investigations, and will continue to do so.<sup>12</sup>

f. The Government’s reply<sup>13</sup> refined the scope of the relief requested by asking the Commission to either (1) rescind the part of AE 524LL suppressing the use of the statements made by the Accused to the FBI for any purpose; or in the alternative, (2) withdraw and clarify AE 524LL and permit the parties to brief the Commission “after clarifying critical parts of the ruling.”

g. On 28 December 2018, Mr. bin al Shibh supplemented<sup>14</sup> his response to the Government’s motion for reconsideration, proffering facts he claimed were unavailable at the time he filed his original response. Mr. bin al Shibh asserted that on 28 November 2018, the Defense “received an email from the Government informing [them] that” a witness who had previously agreed to meet with the Defense via classified telephone call “would not be available for interview after January

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<sup>8</sup> AE 524QQ (KSM), Mr. Mohammad’s Response to AE 524NN (GOV), Government Motion to Reconsider and Clarify AE 524LL (RUL), filed 26 September 2018.

<sup>9</sup> AE 524SS (WBA), Mr. bin ‘Atash’s Response to AE 524NN (GOV), Government Motion to Reconsider and Clarify AE 524LL (RUL), filed 26 September 2018.

<sup>10</sup> AE 524TT (RBS), Defense Response to AE 524NN (GOV) Government Motion to Reconsider and Clarify AE 524LL (Ruling), filed 26 September 2018.

<sup>11</sup> AE 524RR (AAA), Mr. al Baluchi’s Response to Government Motion to Reconsider and Clarify AE 524LL Ruling, filed 26 September 2018.

<sup>12</sup> *Id.*

<sup>13</sup> AE 524WW (GOV), Government Combined Reply To AE 524QQ (KSM), AE 524RR (AAA), AE 524SS (WBA) and AE 524TT (RBS), Responses to Government’s Motion to Reconsider and Clarify AE 524LL (RUL), filed 26 October 2018.

<sup>14</sup> AE 524TT (RBS Sup), Mr. Bin al Shibh’s Supplement to AE 524TT (RBS) Mr. Bin al Shibh’s Response to AE 524NN (GOV), filed 28 December 2018.

2019.”<sup>15</sup> Mr. bin al Shibh interviewed that witness by phone on 11 December 2018,<sup>16</sup> in accordance with the protocol established by PO #4 and in coordination with the Government.<sup>17</sup> The witness told Mr. bin al Shibh that he/she was never given the option for an in-person interview, which would have been his/her “preferred method.”<sup>18</sup> The witness, according to Mr. bin al Shibh, offered to speak with the Defense again and made no mention of unavailability after January 2019. Mr. bin al Shibh argued this situation refutes the Government’s claims that PO #4 was “working,” and illustrates PO #4’s chilling effect. Mr. bin al Shibh attached sworn affidavits to his supplement attesting to the facts he proffered.

h. On 15 January 2019, Mr. Ali supplemented<sup>19</sup> his original response to the Government’s motion for reconsideration, also proffering examples of his attempts to interview witnesses in accordance with PO #4. Mr. Ali stated that during the secured videoconference interview of one witness contacted pursuant to PO #4, he asked the witness whether his “request for an in-person interview had been conveyed,” to which his/her response was “no.”<sup>20</sup> The witness, who was wearing “light disguise,” was asked if he/she proposed the disguise. The witness stated the Government had told him/her to wear a disguise for the interview but he/she would have “agreed to meet in-person without a disguise.”<sup>21</sup>

i. The Government responded to Mr. bin al Shibh’s supplement<sup>22</sup> on 11 January 2019, and to Mr. Ali’s supplement<sup>23</sup> on 5 February 2019. The Government reiterated their previous arguments for

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<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 5.

<sup>19</sup> AE 524RR (AAA Sup), Mr. al Baluchi’s Supplement to Mr. al Baluchi’s Response to Government Motion to Reconsider and Clarify AE 524LL Ruling, filed 15 January 2019.

<sup>20</sup> *Id.* at 8.

<sup>21</sup> *Id.*

<sup>22</sup> AE 524DDD (GOV), Government Response to AE 524TT (RBS Sup), Mr. Binalshibh’s Supplement to AE 524TT (RBS), Mr. Binalshibh’s Response to AE 524NN (GOV), filed 11 January 2019.

<sup>23</sup> AE 524FFF (GOV), Government Response to AE 524RR (AAA Sup), Mr. Ali’s Supplement to Mr. Ali’s Response to Government Motion to Reconsider and Clarify AE 524LL, Ruling, filed 5 February 2019.

reconsideration and clarification of the Commission's Ruling in both responses. The Government response to Mr. bin al Shibh's supplement also asserted that the Government interviewed the witness mentioned in Mr. bin al Shibh's supplement "to clarify potential discrepancies between its understandings regarding the notification of this witness in question and averments contained in" the supplement.<sup>24</sup> The Government stated, "[w]hile not entirely disputing the facts as set forth in the Defense supplement, the witness provided important information for this Commission's consideration."<sup>25</sup> The Government then drew some distinctions between the facts proffered by Mr. bin al Shibh regarding his interview with the witness and the responses the Government obtained from the same witness, indicating some inconsistencies in the particulars of questions asked and the substance of the answers given. The Government responded to Mr. Ali's supplement by stating they had been unable to interview the witness described in the supplement, but argued the Government had never intentionally misrepresented any information to the Defense or the Commission and reiterated that PO #4 is an effective way to advise witnesses of Defense requests for interviews.<sup>26</sup>

j. On 12 February 2019, Mr. Ali replied<sup>27</sup> to the Government response to his supplement, arguing that despite the Government's averment of never intentionally misrepresenting information regarding the efficacy of PO #4, the mere existence of the PO negatively affects witness cooperation in a variety of ways ultimately resulting in a restriction on Defense investigations.

k. On 1 March 2019, Mr. Ali moved<sup>28</sup> the Commission to compel the production of witnesses whose testimony he claimed would be relevant and necessary to address the legality of PO #4.

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<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.*

<sup>26</sup> AE 524FFF (GOV), at pp. 2, 5.

<sup>27</sup> AE 524GGG (AAA), Mr. al Baluchi's Reply to Government Response to Mr. al Baluchi's Supplement to AE 524RR, filed 12 February 2019.

<sup>28</sup> AE 524HHH (AAA), Mr. al Baluchi's Motion to Compel Production of Witnesses Whose Testimony is Relevant and Necessary to Address the Legality of Protective Order #4 in AE 524RR (AAA Sup) and AE 524TT (RBS Sup), filed 1 March 2019.

1. On 15 March 2019, the Government responded<sup>29</sup> to Mr. Ali's motion to compel the production of witnesses and to Mr. bin al Shihb's supplement. The Government argued Mr. Ali's witnesses would not be relevant or necessary for determining the matters at issue in this motion series.<sup>30</sup>

m. On 21 March 2019, Mr. Ali replied<sup>31</sup> to the Government response arguing that the Government's representations regarding the neutrality of communications with witnesses contacted pursuant to PO #4 are unreliable and that his investigation has been illegally curtailed by the PO.<sup>32</sup>

2. **Findings of Fact.** This Ruling incorporates by reference ¶¶ 2.a. and 2.b. of the Commission's Ruling in AE 524LL, which set forth the Commission's findings of fact in the AE 524 series. The Commission makes the following additional findings of fact:

a. On 21 August 2018,<sup>33</sup> 20 November 2018,<sup>34</sup> and 6 February 2019<sup>35</sup> the Commission authorized the Government to produce to the Defense additional summarized and/or substituted discovery related to the Accused's time in the RDI program through the Military Commission Rules of Evidence (M.C.R.E.) 505 process.

b. Prior to and after the issuance of AE 524LL, members of the Defense Teams conducted some interviews of available RDI witnesses in accordance with PO #4. The parties generally dispute

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<sup>29</sup> AE 524JJJ (GOV), Government Response to Mr. Ali's Motion to Compel Production of Witnesses Whose Testimony is Relevant and Necessary to Address the Legality of Protective Order #4 in AE 524RR (AAA Sup) and AE 524TT (RBS Sup), filed 15 March 2019.

<sup>30</sup> *Id.* at 3.

<sup>31</sup> AE 524KKK (AAA), Mr. al Baluchi's Reply to Government Response to Mr. al Baluchi's Motion to Compel Production of Witnesses Whose Testimony is Relevant and Necessary to Address the Legality of Protective Order #4 in AE 524RR (AAA Sup) and AE 524TT (RBS Sup), filed 21 March 2019.

<sup>32</sup> *Id.* at 7.

<sup>33</sup> AE 542O Order, Government Motion to Request Substitutions and Other Relief Regarding Classified Continuing and Trial Discovery, dated 21 August 2018.

<sup>34</sup> AE 542AA Order, Government Motion to Request Substitutions and Other Relief Regarding Classified Continuing and Trial Discovery, dated 28 November 2018.

<sup>35</sup> AE 419O Order, Government Motion to Request Substitutions and Other Relief Regarding Classified Continuing and Trial Discovery, dated 6 February 2019.

the negative effects of PO #4 on witness cooperation, which has led to additional pleadings related to this motion series.<sup>36</sup>

### 3. Law.

a. This Ruling incorporates by reference ¶¶ 3.a. and 3.b. of the Commission's Ruling in AE 524LL.

b. Rule for Military Commissions (R.M.C.) 905(f) permits the Commission to reconsider any ruling (except the equivalent of a finding of not guilty) prior to authentication of the record of trial. Either party may move for reconsideration, but granting such a request is in the Military Judge's discretion. Generally, reconsideration should be based on a change in the facts or law, or instances where the ruling is inconsistent with case law not previously briefed. Reconsideration may also be appropriate to correct a clear error or prevent manifest injustice. *See United States v. Libby*, 429 F. Supp. 2d 46, 47 (D.D.C. 2006); *United States v. McCallum*, 885 F. Supp. 2d 105, 115 (D.D.C. 2012) *aff'd*, 721 F.3d 706 (D.C. Cir. 2013).

c. Motions for reconsideration are not appropriate to raise arguments that could have been, but were not, raised previously, or arguments the Commission has previously rejected. *See United States v. Booker*, 613 F. Supp. 2d 32, 35 (D.D.C. 2009); *United States v. Bloch*, 794 F. Supp. 2d 15, 19 (D.D.C. 2011). Nor are motions for reconsideration appropriate for the proffer of evidence available when the original motion was filed, but, for unexplained reasons, was not proffered at that time. *See Bloch*, 794 F. Supp. 2d at 19-20.

d. "The defense shall have reasonable opportunity to obtain witnesses and other evidence as provided in these rules." R.M.C. 703(a). "Each party is entitled to the production of any available witness whose testimony on a matter in issue on the merits or on an interlocutory question would be relevant and necessary." R.M.C. 703(b)(1).

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<sup>36</sup> *See, e.g.*, AE 524TT (RBS Sup), AE 524RR (AAA Sup), AE 524DDD (GOV), and AE 524FFF (GOV), AE 524HHH (AAA), AE 524JJJ (GOV), and AE 524KKK (AAA).



#### 4. Analysis.

a. The Commission previously found:

[T]he extensive discovery provided by the Government regarding the RDI program, the extensive information about the RDI program available in open sources, the Government's offer to stipulate to 'verifiable facts regarding the Accused's involvement and treatment within the CIA's former RDI program,' and witness interviews of CIA persons who consent to a Defense interview pursuant to Protective Order #4 **will not** provide the Defense with substantially the same ability to investigate, prepare, and litigate motions to suppress the FBI Clean Team Statements. Specifically, Protective Order #4 will not allow the Defense to develop the particularity and nuance necessary to present a rich and vivid account of the 3-4 year period in CIA custody the Defense alleges constituted coercion.<sup>37</sup>

As a result, the Commission crafted an impromptu remedy, which precluded the Government from introducing any FBI Clean Team Statement from any of the Accused for any purpose.

b. Upon reconsideration, the Commission finds this determination, and the resulting remedy, to be premature. Although the Commission may ultimately reaffirm both the finding and the remedy, the Commission believes that the more appropriate time to assess the Defense's ability to present evidence related to the voluntariness of the FBI Clean Team Statements is after conducting an evidentiary hearing to fully explore the issue. This hearing would allow the Defense to request relevant witnesses, and (if they are produced) conduct a thorough examination on the record. The premature imposition of such an exacting remedy, which prevents the Government from introducing the FBI Clean Team Statements for any purpose prior to the conduct of an evidentiary hearing on voluntariness, results in a manifest injustice.

c. The Commission's reconsideration and deferral of its ruling in AE 524LL does not, however, mean that the Commission's ultimate finding won't be the same—mainly that PO #4 precludes the Defense from having substantially the same ability to investigate, prepare, and litigate motions to suppress the FBI Clean Team Statements. In other words, the remedy may ultimately

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<sup>37</sup> AE 524LL Ruling, at pp. 34-35.

prove appropriate, but its timing is not. The decision as to whether PO #4 allows the Defense to develop “the particularity and nuance necessary to present a rich and vivid account of the 3-4 year period” the Accused were in CIA custody is best made after the Defense has the ability to use all tools at their disposal. Although the Defense has received extensive discovery and interviewed some RDI witnesses, the extent of the Government’s willingness to further ease restrictions upon further Defense investigation,<sup>38</sup> to enter into meaningful stipulations,<sup>39</sup> or to produce RDI witnesses during upcoming evidentiary suppression hearings is not yet fully known.

d. Likewise, the Commission finds premature the determination that PO #4 will provide the Defense with substantially the same ability to investigate, prepare, and present evidence regarding the conditions of confinement of the Accused while in CIA custody for mitigation. The importance of mitigation evidence in a capital case warrants postponing this determination until the Commission further develops—through, at a minimum, the conduct of evidentiary suppression hearings—additional information to inform and dictate this analysis.

## 5. Ruling.

a. The Government motion for reconsideration in AE 524NN (GOV) is **GRANTED**. The Commission’s previous finding that the extensive discovery provided by the Government regarding the RDI program, the extensive information about the RDI program available in open sources, the Government’s offer to stipulate to “verifiable facts regarding the Accused’s involvement and treatment within the CIA’s former RDI program,” and witness interviews of CIA persons who

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<sup>38</sup> For example, through modification of PO #4, a course of action proposed by the Government. *See* 524NN (GOV) at 3.

<sup>39</sup> The Government has repeatedly agreed to stipulate to “almost anything the Accused say happened to them (even if it were factually untrue) for purposes of a suppression motion,” and has invited the Defense to propose such a stipulation which could provide the Commission with a “rich and vivid” account of the Accused’s time in CIA custody. *See* AE 524NN (GOV) at 61. This offer is somewhat illogical given that the Government presumably has the greater ability to formulate an accurate and detailed timeline for each Accused’s time in the CIA RDI Program. Accordingly, the Commission encourages the Government to begin the process of proposing a stipulation to the Defense, which the Government feels will meet the threshold of a “rich and vivid” account.

consent to a Defense interview pursuant to Protective Order #4: (1) will provide the Defense with substantially the same ability to investigate, prepare, and litigate its mitigation case; and (2) will not provide the Defense with substantially the same ability to investigate, prepare, and litigate motions to suppress the Federal Bureau of Investigation (FBI) Clean Team Statements is **DEFERRED**. The Commission's ruling precluding the Government from introducing any FBI Clean Team Statement from any of the Accused for any purpose is **SUSPENDED**. The Commission will direct evidentiary hearings to address the voluntariness of the FBI Clean Team Statements.

b. Mr. Ali's motion for witnesses in AE 524HHH (AAA) is **MOOT**.<sup>40</sup>

## 6. Order.

a. **Timeline: Evidentiary Hearing.** The Commission will conduct an evidentiary hearing to determine whether or not the Accuseds' FBI Clean Team Statements should be suppressed based on voluntariness. Defense teams that wish to move the Commission to suppress the statements will adhere to the following timeline:

(1) Motions on the merits of the evidentiary hearing (*i.e.*, any motions to suppress the FBI Clean Team Statements as involuntary) are due to the Commission no later than **10 May 2019**.

(2) Requests for witnesses in support of the aforementioned motions are due to the Government no later than **10 May 2019**. The Government's response to the Defense Witness requests is due by **20 May 2019**. If denied, motions to compel witnesses are due to the Commission no later than **24 May 2019**. The normal briefing cycle will commence upon the filing of any motions to compel witnesses.

b. **Modifications to PO #4.** The Government indicates they are prepared to propose modifications to PO #4 that they believe would afford the Accused more opportunities to further

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<sup>40</sup> In addition to being moot, the Commission finds that the witness request submitted by Mr. Ali in AE 524HHH (AAA) is not ripe as the Government has offered to propose edits to PO #4 that may resolve some of the Defense's issues with the procedure.

develop their claims.<sup>41</sup> The Government is directed to provide the Commission and the Defense a proposal presenting said modifications no later than **26 April 2019**.

So **ORDERED** this 3rd day of April, 2019.

//s//  
K. A. PARRELLA  
Colonel, U. S. Marine Corps  
Military Judge

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<sup>41</sup> See 524NN (GOV) at 3.