

**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 530PPP**

**ORDER**

**Mr. Hawsawi’s Motion to Compel  
Assistance Enabling Him to Comply With  
Order AE 530LLL**

**6 March 2019**

**1. Procedural History.**

a. On 2 February 2018, the Commission conditioned the return of Mr. Hawsawi’s laptop<sup>1</sup> on his Defense Team’s having certified that a forensic examination thereof revealed no evidence of tampering.<sup>2</sup> On 11 November 2018, the Commission rejected a certification submitted by Mr. Hawsawi on the basis that it did not establish that a *forensic* examination had been conducted.<sup>3</sup>

b. On 20 November 2018, Mr. Hawsawi requested the Convening Authority (CA) provide him a qualified expert (at a rate of \$250 per hour for 15 hours, or a total of \$3,750.00) to conduct a forensic exam.<sup>4</sup> The CA denied the request on 8 January 2019.<sup>5</sup> While acknowledging the Commission’s order, and the Hawsawi Defense Team’s current inability to fulfill it, the CA took the position that providing an expert was inconsistent with the Military Judge’s directive that the exam “be conducted by Defense IT personnel.”<sup>6</sup>

---

<sup>1</sup> The laptops of all five Accused were seized on 18 October 2017 based on suspicion of tampering. *See* AE 530 (GOV), Government Notice Of Evidence Relevant to October 2017 Laptop Seizure, filed 19 October 2017.

<sup>2</sup> AE 530LL, Order: Defense Motion to Compel the Government to Return Immediately all Materials Seized from Mr. bin ‘Atash by JTF-GTMO on 18 October 2017, dated 2 February 2018, para. 5.b.

<sup>3</sup> AE 530LLL, Ruling: Mr. Hawsawi’s Notice of Objection and Motion to Strike the Government’s Improper Filing AE 530JJJ (GOV), dated 11 November 2018.

<sup>4</sup> AE 530MMM (MAH). Mr. Hawsawi’s Ex Parte, Under Seal Motion to Compel Expert Assistance to Enable Mr. al Hawsawi’s Compliance with Order AE 530LLL, filed 11 January 2019, Attach. B.

<sup>5</sup> AE 530MMM (MAH), Attach. C.

<sup>6</sup> *Id.*

c. On 11 January 2019, Mr. Hawsawi moved the Commission (in an *ex parte*, under seal filing) to compel this expert support.<sup>7</sup> Mr. Hawsawi did not request oral argument.<sup>8</sup> The Government objected to the *ex parte* filing.<sup>9</sup>

2. **Findings of Fact.** The Commission has, in effect, directed that Mr. Hawsawi's Defense Team forensically examine his laptop. They lack the capability to do so. The CA has acknowledged as much.

### 3. Law.

a. **Burden of Proof.** As the moving party, Mr. Hawsawi bears the burden of proving by a preponderance of the evidence any facts prerequisite to the relief he seeks. R.M.C. 905(c)(1)-(2).

b. **Expert Assistance.** When an Accused establishes both that expert assistance is necessary, and that its denial would be fundamentally unfair, the Commission will direct it be provided.<sup>10</sup>

4. **Analysis.** Per order of the Commission, Mr. Hawsawi's Defense Team requires the capability to forensically examine his laptop. Neither his Team nor the Military Commissions Defense Office writ large possesses the expertise required. The CA acknowledges both the requirement and the Defense's lack of the expertise needed to meet it. The Commission's plain intention in directing that Defense IT personnel conduct the examination was preservation of attorney-client

---

<sup>7</sup> AE 530MMM (MAH), Mr. Hawsawi's Ex Parte, Under Seal Motion to Compel Expert Assistance to Enable Mr. al Hawsawi's Compliance with Order AE 530LLL, filed 11 January 2019.

<sup>8</sup> AE 530MMM (MAH), para. 7.

<sup>9</sup> AE 530NNN (GOV), Government Notice Of Objection to *Ex Parte* and Under Seal Filing of AE 530MMM (MAH), filed 14 January 2019, p. 2. Mr. Hawsawi filed *ex parte* and under seal in reliance on prior orders of the Commission permitting parties to do so when openly moving for expert support would impermissibly reveal trial strategy. *See* AE 530 MMM (MAH), para. 2. Justification for the relief requested here is patent; the Commission therefore requires neither oral argument nor responsive pleadings, and therefore sees little value in directing Mr. Hawsawi to re-file in the open. The Commission will also overlook, in this instance, Mr. Hawsawi's failure to include an inventory of expert assistance currently available to him (normally required in all expert assistance requests by prior order of the Commission), given the unique nature of this matter and the clear basis for relief. *See* AE 245A, Trial Conduct Order: Supporting Information Required For All Motions to Compel Expert Assistance, dated 7 October 2016. However, the Commission sees no need for its order addressing this matter to be *ex parte*.

<sup>10</sup> *United States v. Lloyd*, 69 M.J. 95, 99 (C.A.A.F. 2010).

privilege, which may be readily accomplished using the means Mr. Hawsawi proposes. The CA will provide Mr. Hawsawi's Defense Team the means to effectuate the Commission's order.

**5. Ruling.**

a. Mr. Hawsawi's motion for assistance enabling him to complete forensic examination of his laptop is **GRANTED**.

b. The Government's objection to the *ex parte* and under seal filing of that motion is **OVERRULED**.

6. **Order.** The CA will expeditiously appoint and fund the expert requested by Mr. Hawsawi, or an adequate substitute, for 15 hours at a rate of \$250 per hour for the purpose of forensically examining his laptop.

So **ORDERED** this 6th day of March, 2019.

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