

MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY

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 595CC(WBA)

Mr. bin 'Atash's Reply to AE 595BB(GOV),
Government Response to AE 595X(WBA),
Mr. bin 'Atash's Motion to Transfer
AE 595W(WBA) to Colonel Douglas K.
Watkins, USA, Chief Judge of
the Military Commissions

8 March 2019

1. **Timeliness:** This Reply is timely. (AE 595Y(ORD) at ¶ 2.b).

2. **Procedure of the Case:**

a. On 26 February 2019, Mr. William Montross, Detailed Defense Counsel for Mr. bin 'Atash, alerted Trial Counsel that AE 595W(WBA), Mr. bin 'Atash's Motion to Disqualify Colonel Keith A. Parrella as Military Judge in United States v. Mohammad, et al., would be filed on 27 February 2019. Mr. Montross then gave notice of Mr. bin 'Atash's intention to file a motion to transfer AE 595W(WBA) to Chief Judge Douglas Watkins and requested the position of Trial Counsel on that motion to transfer. (Attach. B at 2-3).

b. On 27 February 2019, Mr. Clay Trivett, Chief Trial Counsel, repeated an earlier statement of position that Trial Counsel did not have enough information regarding the claimed factual basis to disqualify Colonel Parrella in AE 595W(WBA). Mr. Trivett then stated, "The Prosecution will oppose any separate motion or relief to transfer AE 595W(WBA) to a different military judge." (Attach. B at 2).

c. On 27 February 2019, Mr. bin 'Atash filed AE 595W(WBA) and AE 595X(WBA), Mr. bin 'Atash's Motion to Transfer AE 595W(WBA) to Colonel Douglas K. Watkins, Chief Judge of the Military Commissions. In the Motion to Transfer, Mr. bin 'Atash explained how, due to the facts and the procedure of the case (in particular that Judge Parrella had denied oral and written motions to recuse himself), it was necessary for a neutral and disinterested judge (Chief Judge Watkins or his designee) to hear the motion to disqualify. (AE 595X(WBA) at 5-12). In the Motion to Transfer's Section 8 "Conference with Opposing Counsel," Mr. bin 'Atash provided the following: "The Prosecution objects to the transfer of AE 595W(WBA), Mr. bin 'Atash's Motion to Disqualify Colonel Keith A. Parrella, USMC, to a neutral and disinterested judge." (AE 595X(WBA) at 12).

d. About 53 minutes after Trial Judiciary accepted AE 595X(WBA), Mr. Trivett emailed Mr. Montross and repeated that the Trial Counsel "will oppose any separate motion or relief to transfer AE 595W(WBA) to a different military judge." (Attach. B at 1). Mr. Trivett, however, took issue with how Counsel for Mr. bin 'Atash presented the position of Trial Counsel in Section 8 of AE 595X(WBA), claiming that it was a "misrepresentation of the Prosecution's position in the conference and a gratuitous comment." (Attach. B at 1). Mr. Trivett then requested that Counsel for Mr. bin 'Atash "correct the record" and gave notice that Trial Counsel would "file a motion to strike your filing if you do not do so by the end of the week." (Attach. B at 1).

e. On 28 February 2019, the Military Judge issued an expedited briefing order on AE 595X(WBA), providing that the Government response was due no later than 6 March 2019 and any Defense replies were due no later than 8 March 2019. (AE 595Y(ORD) at ¶ 2). The Order

did not set an expedited briefing on AE 595W(WBA)—the Motion to Disqualify Judge Parrella—just AE 595X(WBA), the Motion to Transfer AE 595W(WBA) to Chief Judge Watkins.

f. On 5 March 2019, Counsel for Mr. al Baluchi filed AE 595AA(AAA), Mr. al Baluchi's Motion to Decline to Joinder to AE 595X(WBA). The motion to decline joinder adopts all of the facts stated in AE 595X(WBA). (AE 595AA(AAA) at 1). Nevertheless, Mr. al Baluchi argues that the Military Commissions Act of 2009 ("MCA"), the Regulation for Trial by Military Commission ("R.T.M.C."), and military case law, do not support the requested relief in AE 595X(WBA) because they require that a military judge be detailed to the military commission, not to hear a particular motion, but only to hear a particular case. (AE 595AA(AAA) at 2-4).

g. On 6 March 2019, the Prosecution filed AE 595BB(GOV), Government Consolidated Response to AE 595W(WBA), Mr. bin 'Atash's Motion to Disqualify Judge Parrella and AE 595X(WBA), Mr. bin 'Atash's Motion to Transfer AE 595W(WBA) to Chief Judge Watkins. The Consolidated Response contains a footnote addressing Section 8 of AE 595X(WBA). The footnote claims that Defense Counsel for Mr. bin 'Atash "intentionally misrepresented the Prosecution's position in the conference for AE 595X(WBA), and then failed to correct the record despite being requested to do so." (AE 595BB(GOV) at 10 n.27). The Prosecution argues that its position "has always been that Judge Parrella is a neutral and disinterested judge, and [because Judge Parrella has ruled twice on requests for recusal and the U.S. Court of Appeals for the D.C. Circuit refused to stay the proceedings in a related mandamus case], the Defense certificate of conference is an intentional misrepresentation of the Prosecution's position, and is a gratuitous and petty comment aimed to discredit the United States' commitment to justice in this case." (AE 595BB(GOV) at 10 n.27). The Prosecution declares that AE 595X(WBA) "should not be

accepted until this material misrepresentation of the United States' position is correct.”
(AE 595BB(GOV) at 10 n.27).

3. Reply:

Mr. bin 'Atash filed AE 595W(WBA) (Motion to Disqualify) and AE 595X(WBA) (Motion to Transfer AE 595W(WBA)) on 27 February 2019. In AE 595Y(ORD) at ¶ 2, the Military Judge issued an expedited briefing order with respect to the Motion to Transfer. In AE 595Y(ORD) at ¶ 2, the Military Judge set an expedited deadline for Defense replies on the Motion to Transfer for 8 March 2019. The deadline to file Defense replies to the underlying substantive motion, the Motion to Disqualify, are not due until 13 March 2019.¹ Accordingly, although the Prosecution consolidated its response to the Motion to Disqualify and the Motion to Transfer in a single pleading, the instant Reply addresses only the Prosecution's arguments opposing the Motion to Transfer.

The Prosecution's choice to direct most of its attention to the merits of the Motion to Disqualify in an expedited-ordered response to Mr. bin 'Atash's Motion to Transfer is telling: it believes that Judge Parrella will deny the Motion to Disqualify regardless of its merit. The Prosecution's focus on disqualification, at the expense of transfer, misdirects the analysis and belies its concern that a different judge might see the disqualification issue differently. A truly neutral and disinterested judge might rule that a reasonable person—knowing the relevant facts

¹ Because the Prosecution filed its Consolidated Response on 6 March 2019, a reply in the normal course regarding the argument related to AE 595W(WBA) would be due on 13 March 2019. RC 3.7.e.(2).

and considering all the information presented in the Motion to Disqualify—would question the impartiality of Judge Parrella. The Prosecution seeks to avoid any such ruling.

- a. The Due Process Clause of the Fifth Amendment and the Eighth Amendment—not the MCA of 2009 or the R.T.M.C.—require the Military Commissions to detail a neutral and disinterested judge to hear a motion to disqualify.

The Prosecution argues that there is no legal basis to detail a military judge for the expressed purpose of hearing a motion to disqualify under R.M.C. 902, regardless of how or why some states and federal courts handle motions to disqualify by having a different judge hear them. On the contrary, military judges are not interchangeable and do “not have subject matter or personal jurisdiction to hear all cases and controversies arising under said jurisdiction or any military commission.” (AE 595BB(GOV) at 27). The military judges are detailed to a military commission for the expressed, single purpose of trying a case under the MCA of 2009 and R.T.M.C. and cannot be detailed to anything else. (AE 595BB(GOV) at 27-29). In support, the Prosecution relies on United States v. Quintanilla, 56 M.J. 37 (C.A.A.F. 2001), for the proposition that there are distinctions between federal district court judges and military judges. (AE 595BB(GOV) at 27, 29).

The Prosecution fails completely to address the Constitutional mandates requiring transfer to a neutral and disinterested judge. Mr. bin ‘Atash argues that the Fifth and Eighth Amendments require a motion to disqualify this military judge in the Military Commissions system be heard by a judge other than the judge whose impartiality is the subject of the motion. There is not a single word of the Government’s Response opposing that legal mandate. The Prosecution ignores all Constitutional mandates. It is wrong in doing so.

Federal statutes—even ones that purport to create an international law of war tribunal such as the MCA of 2009—are subservient to the United States Constitution and reviewed through the lens of its provisions. See, e.g., Al Bahlul v. United States, 840 F.3d 757, 768-74 (D.C. Cir. 2016) (en banc) (Kavanaugh, J.) (plurality) (holding that—regardless of whether international law recognized conspiracy as offense in violation of the law of war—Articles I and III of the Constitution permitted Congress to enact the Military Commissions Act and make conspiracy to commit war crimes a crime punishable by military mission). It is that Constitutional supremacy that allows the Supreme Court to void certain language drafted by Congress when it is unconstitutionally vague in violation of the Fifth Amendment’s Due Process Clause. See Johnson v. United States, 135 S. Ct. 2551, (2015) (noting that criminal statutes that are so without standards that they invite arbitrary enforcement violate the “first essential of due process”: fair play and settled rule of law).

Likewise, in the context of the motions to recuse/disqualify judges, the Supreme Court has ruled that the Due Process Clauses requires that a litigant must be able to present his case with assurance that the judge is not “predisposed to find against him.” Marshall v. Jerrico, Inc., 446 U. S. 238, 242 (1980). In the criminal context, the Supreme Court has held that the Due Process Clause’s “insistence on the appearance of neutrality is . . . an essential means of ensuring the reality of a fair adjudication [and] the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself.” Williams v. Pennsylvania, 136 S. Ct. 1899, 1909-10 (2016). Because this case is not just a criminal matter, but one in which the death penalty may be imposed, the Supreme Court requires all proceedings—

including motions to disqualify judges—be determined with a heightened degree of fairness and reliability. See Beck v. Alabama, 447 U.S. 625, 638 (1980).

The Prosecution makes no response to this argument. Instead, the Prosecution relies on a decision by the Court of Appeals for the Armed Forces (Quintanilla) to state the obvious: military judges and federal district court judges are different. (AE 595BB(GOV) at 27).

In the Motion to Transfer, Mr. bin ‘Atash neither argues that military judges and federal district court judges are one and the same, nor argues that Congress created the Military Commissions to be a court of general criminal jurisdiction. Those principles are undisputed and, more importantly, not germane to the issue of transfer. Notwithstanding those principles, Constitutional provisions require the applicable statutes, rules, and regulations to provide a fair process. Thus, the Fifth and Eighth Amendments to the Constitution mandate that a neutral and disinterested judge hear Mr. bin ‘Atash’s Motion to Disqualify Judge Parrella. (AE 595X(WBA) at 9-11).

- b. Transferring the Motion to Disqualify to a neutral and disinterested judge has no bearing on whether a military commission consisting of military members has subject matter and personal jurisdiction over Mr. bin ‘Atash.

It is important to highlight that, while the military commissions system borrows from the Uniform Code of Military Justice’s (“UCMJ”) procedural and evidentiary rules, it also borrows from federal criminal statutes and rules of procedure. It is a hybrid that cannot properly be described as a system similar to either. The U.S. Court of Appeals for the D.C. Circuit said it plainly: “Congress passed the [MCA of 2009], which established a system of military commissions and largely exempted them from the requirements of the UCMJ and the Geneva Conventions.” In re Al-Nashiri, 835 F.3d 110, 115 (D.C. Cir. 2016); see also 10 U.S.C. § 948b (2018). Although it

can be argued that Congress designed the military commissions system to—like the federal criminal system—charge and prosecute individuals for particular offenses,² no one could argue that Congress passed the MCA of 2009 with the mission (like that of the UCMJ) to facilitate good order and discipline in the United States military.³

Accordingly, the fact that the UCMJ system details judges to specific commissions and bars them from doing anything else is not dispositive here. The military judges available for detailing by the Chief Judge in the military commission system are not similarly constrained. The MCA of 2009 cautions explicitly against such automatic application of UCMJ principles by providing that the UCMJ, “while instructive, is . . . not on its own force binding on the military commissions established under this chapter.” 10 U.S.C. § 948b(c); see also Baker v. Spath, No. 17-02311, 2018 U.S. Dist. LEXIS 10162, at *39 (D.D.C. June 18, 2018) (holding the MCA of 2009’s direction to use military case law as “instructive” did not mean that the UCMJ could be used to create ambiguity in the text where none existed before).

Judge Royce Lamberth of the U.S. District Court for the District of Columbia, in vacating the contempt conviction of Chief Defense Counsel Brigadier General John G. Baker, analyzed Sections 948i and 948j of the MCA of 2009 and determined that the “military judge” and the “military commission” are wholly distinct entities in the commissions system:

² In re Al-Nashiri, 835 F.3d at 115.

³ Charles J. Dunlap, Jr., Military Justice, in The Modern American Military 243 (David M. Kennedy ed., 2015). Article 134 of the UCMJ provides that “all disorders and neglects to the prejudice of good order and discipline in the armed forces [by persons subject to the UCMJ], shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.” 10 U.S.C. § 934.

The requirements for being a military judge are different from the requirements for being a member of a military commission. The words used in the two sections describing the respective relations of the members and the military judge to the commission are different. Section 948i describes members as ‘serv[ing] on a military commission.’ But § 948j describes a military judge as ‘detailed to [a] military commission’ and ‘presid[ing] over [a] military commission.’ These differences strongly indicate that the military commission actually consists of the members, while the military judge is separate from and ancillary to that commission.

Baker, 2018 U.S. Dist. LEXIS 10162, at *34 (emphasis in original) (internal citations omitted).

Accordingly, when Mr. al Baluchi argues that the MCA of 2009 and R.T.M.C. prohibit the transfer of the Motion to Disqualify to Chief Judge Watkins or the detailing of a different military judge to hear the Motion to Disqualify, lest it deprive the military commission of jurisdiction, it mistakenly conflates the military judge with the military commission. (AE 595AA(AAA) at 3-4). The military commission either has subject matter and personal jurisdiction to try Mr. bin ‘Atash for the Referred Charges under the MCA of 2009 or it does not, but that jurisdiction is not dependent on which particular military judge is detailed at any given moment to preside over the military commission (consisting of members to be the finders of fact at trial). Similarly, if Chief Judge Watkins were to transfer the Motion to Disqualify to himself or detail another military judge for the expressed purpose of handling the Motion to Disqualify it would not bear on the question of whether Mr. bin ‘Atash is triable by military commission.⁴

⁴ As Mr. bin ‘Atash explained in his declination of joinder to the motions to dismiss filed by Messrs. al Baluchi and al Hawsawi for want of subject matter and personal jurisdiction, those are questions left for another day when the Government has provided the necessary discovery and Defense Counsel have had an opportunity to review and assess it. (AE 488-4)(MFL)(WBA, RBS, KSM) at 4; AE 502LL(WBA) at 3).

- c. If Chief Judge Watkins declines transfer of the Motion to Disqualify to himself or to detail a military judge to hear the Motion to Disqualify, there is an appellate process, but a trial-level hearing is the best mechanism to determine whether Judge Parrella must be disqualified.

The Prosecution cautions against transferring the Motion to Disqualify to Chief Judge Watkins because, if he were to deny the requested relief, “logic seems to dictate that he too would be thrown into the lot of those with an ‘inability or unwillingness to recognize’ that the facts require recusal, and another recusal challenge would spring forth elsewhere.” (AE 595BB(GOV) at 23-24). The Prosecution’s fear of this recusal challenge is understandable; Mr. bin ‘Atash’s motion has merit. The Prosecution’s unsupported fears of the subsequent procedural steps is not understandable. As Messrs. Mohammad, al Baluchi, and al Hawsawi have shown, the next step in the procedure of a motion to recuse/disqualify Judge Parrella once it has been denied is to file a petition for writ of mandamus before the United States Court of Military Commissions Review.⁵

- d. There is no proper basis to strike Mr. bin ‘Atash’s Motion to Transfer.

The Prosecution claims that Counsel for Mr. bin ‘Atash “intentionally misrepresented the Prosecution’s position in the conference for AE 595X(WBA), and the failed to correct the record despite being requested to do so.” (AE 595BB(GOV) at 10 n.27). By “request,” the Prosecution means its threat to file a “motion to strike” if Mr. bin ‘Atash did not “correct the record” by close of business on 1 March 2018. (Attach. B at 1). The Prosecution now argues that its position “has always been that Judge Parrella is a neutral and disinterested judge, and [because Judge Parrella

⁵ The petitions for writ of mandamus, styled as In re al Hawsawi, Case No. 18-004 (to which Mr. al Baluchi joined on 31 January 2019), and In re Mohammad, 19-001, remain pending before the United States Court of Military Commissions Review.

has ruled twice on requests for recusal and the U.S. Court of Appeals for the D.C. Circuit refused to stay the proceedings in a related mandamus case], the Defense certificate of conference is an intentional misrepresentation of the Prosecution's position, and is a gratuitous and petty comment aimed to discredit the United States' commitment to justice in this case." (AE 595BB(GOV) at 10 n.27). The Prosecution declares that AE 595X(WBA) "should not be accepted until this material misrepresentation of the United States' position is correct." (AE 595BB(GOV) at 10 n.27). Despite these protestations, as of the date of this pleading (8 March 2019), the Prosecution has not filed a motion to strike.

The Rules for Military Commission are clear that the relief intimated by the Prosecution—striking the Motion to Transfer—requires an actual motion. See R.M.C. 905(a). Such a motion would require proof by a preponderance of evidence. See R.M.C. 905(c)(1). A statement, buried in a single footnote of a 38-page pleading, that the Motion to Transfer "should not be accepted" until this claimed misrepresentation is corrected, is not a motion under Rule 905(a).

Even assuming this footnoted request were properly before a military judge, the Prosecution cannot and does not establish grounds for striking the Motion to Transfer. Counsel for Mr. bin 'Atash did not misrepresent the position of the Prosecution when they wrote that the Prosecution "objects to the transfer of AE 595W(WBA), Mr. bin 'Atash's Motion to Disqualify Colonel Keith A. Parrella, USMC, to a neutral and disinterested judge." (AE 595X(WBA) at 12) (emphasis added). The Prosecution now argues in its Response that it opposes the transfer of the Motion to Disqualify from Judge Parrella to a neutral and disinterested judge because Judge Parrella is a neutral and disinterested judge. (AE 595BB(GOV) at 15-23).

The position that Judge Parrella is a neutral and disinterested judge, however, is not a fact; it is argument. The Certificate of Conference is not designed—and it would not be ethically proper if it were—to require the movant to include argument of the opposing party. See RC 3.5.k.

Counsel for Mr. bin ‘Atash also did not include a “gratuitous and petty comment aimed to discredit the United States’ commitment to justice in this case.” (AE 595BB(GOV) at 10 n.27). Oxford defines “gratuitous” as “uncalled for; lacking good reason; unwarranted”⁶ and “petty” as “characterized by an undue concern for trivial matters, especially in a small-minded or spiteful way.”⁷ An example of offering a gratuitous and arguably petty comment would be to characterize the Combined Response by the Prosecution as a document that discredits the United States’ commitment to justice in this case. The Certificate of Conference in the Motion to Transfer had no such comment. (AE 595X(WBA) at 12).

4. Attachments:

A. Certificate of Service.

B. Emails between Trial Counsel (Mr. Clay Trivett) and Defense Counsel for Mr. bin ‘Atash (Messrs. William J. Montross, Jr., and Edwin A. Perry), dated 22-27 February 2019.

⁶ Oxford English (U.S.) Dictionary Online, “Gratuitous” adj. available at: <https://en.oxforddictionaries.com/definition/us/gratuitous>.

⁷ Oxford English (U.S.) Dictionary Online, “Petty” adj., available at: <https://en.oxforddictionaries.com/definition/us/petty>.

5. Signatures:

/s/

CHERYL T. BORMANN
Learned Counsel

/s/

EDWIN A. PERRY
Detailed Defense Counsel

/s/

WILLIAM R. MONTROSS, JR
Detailed Defense Counsel

/s/

MATTHEW H. SEEGER
Major, USA
Detailed Defense Counsel

Attachment A

CERTIFICATE OF SERVICE

I certify that on 8 March 2019, I electronically filed the attached AE 595CC(WBA), Mr. bin 'Atash's Reply to AE 595BB(GOV), Government Response to AE 595X(WBA), Mr. bin 'Atash's Motion to Transfer AE 595W(WBA) to Colonel Douglas K. Watkins, USA, Chief Judge of the Military Commissions, with the Trial Judiciary and forwarded copies to all parties.

//s//

CHERYL T. BORMANN
Learned Counsel

Attachment B

From: CLAYTOGT
To: Montross, William CIV (US); Perry, Edwin A CIV (USA); Connell, James G III CIV (USA); Swann, Robert Lee CIV OSD OMC OCP (USA); Christopher M. Dykstra; "Clay Trivett"; Cox, Dale J (John) CIV OSD OMC OCP (US); DALEJC; Dastoor, Neville F CPT USARMY OSD OMC OCP (US); Dykstra, Christopher M Maj USAF OSD OMC OCP (US); EDWARDR; Furr, Jeffery C SSgt USMC OSD OMC OCP (US); Gibbs, Rudolph P Jr CIV OSD OMC OCP (US); Groharing, Jeffrey D CIV OSD OMC OCP (USA); TR OSD OMC OCP (US); CIV OSD OMC OCP (US); MSgt USAF OSD OMC OCP (USA); "Jeff Groharing"; JEFFERCF; JEFFRE; SSgt USMC OSD OMC OCP (USA); SSG USARMY (US); BENJAMM3; Martins, Mark S BG USARMY OSD OMC OCP (US); Mills, Benjamin A Maj USMC OSD OMC OCP (US); HARIDIVT; Thravalos, Haridimos V CIV DLSA (US); NEVILLFD; NICOLEAT; O'Sullivan, Michael J CIV OSD OMC OCP (US); Tavarez-Patin, Pascual A CIV OSD OMC OCP (USA); PASCUALT; ROBERTLS; TC USARMY OSD OMC OCP (USA); RUDOLPPG; "Ryan, Ed (USANCW)"; Ryan, Edward R CIV (US); Tate, Nicole A CIV (US); Capt USAF OSD OMC OCP (USA); Trivett, Clayton G CIV (USA); Zelnis, Charles R CIV OSD OMC OCP (US)
Cc: OSD NCR OMC List MCDO Motions Distro
Subject: [Non-DoD Source] RE: Request for Position – Motion to Transfer AE 595W(WBA) to Chief Judge Douglas Watkins
Date: Wednesday, February 27, 2019 4:46:30 PM

Mr. Montross,

I am writing to request that you correct the record in AE 595W (WBA) regarding your certificate of conference.

As set forth below, the Prosecution's position on AE 595W (WBA) was as follows: The Prosecution will oppose any separate motion or relief to transfer AE 595W (WBA) to a different military judge.

However, you set forth in your motion: The Prosecution objects to the transfer of AE 595W(WBA), Mr. bin 'Atash's Motion to Disqualify Colonel Keith A. Parrella, USMC, to a neutral and disinterested judge.

As the Prosecution's position has always been that Colonel Parrella is a neutral and disinterested judge, and Colonel Parrella has in fact so ruled, your certificate of conference is both a misrepresentation of the Prosecution's position in the conference and a gratuitous comment.

I am giving you the opportunity to correct the record on your own but intend to file a motion to strike your filing if you do not do so by the end of the week.

Clay Trivett

-----Original Message-----

From: CLAYTOGT
Sent: Tuesday, February 26, 2019 5:35 PM
To: 'Montross, William CIV (US)'; Perry, Edwin A CIV (USA); Connell, James G III CIV (USA); Swann, Robert Lee CIV OSD OMC OCP (USA); Christopher M. Dykstra; Clay Trivett; Cox, Dale J (John) CIV OSD OMC OCP (US); DALEJC; Dastoor, Neville F CPT USARMY OSD OMC OCP (US); Dykstra, Christopher M Maj USAF OSD OMC OCP (US); EDWARDR; Furr, Jeffery C SSgt USMC OSD OMC OCP (US); Gibbs, Rudolph P Jr CIV OSD OMC OCP (US); Groharing, Jeffrey D CIV OSD OMC OCP (USA); TR OSD OMC OCP (US); CIV OSD OMC OCP (US); MSgt USAF OSD OMC OCP (USA); Jeff Groharing; JEFFERCF; JEFFREDG; SSgt USMC OSD OMC OCP (USA); SSG USARMY (US); Martins, Mark S BG USARMY OSD OMC OCP (US)

[REDACTED] Mills, Benjamin A Maj USMC OSD OMC OCP (US)
[REDACTED] ; HARIDIVT [REDACTED] ; Thravalos, Haridimos V CIV DLSA
(US) [REDACTED] ; NEVILLFD [REDACTED] ; NICOLEAT
[REDACTED] ; O'Sullivan, Michael J CIV OSD OMC OCP (US)
Tavarez-Patin, Pascual A CIV OSD OMC OCP (USA) [REDACTED] ; PASCUALT
[REDACTED] LTC USARMY OSD OMC OCP
(USA) [REDACTED] ; RUDOLPPG [REDACTED] ; Ryan, Ed (USANCW)
[REDACTED] ; Ryan, Edward R CIV (US) [REDACTED] ; Tate, Nicole A CIV (US)
[REDACTED] Capt USAF OSD OMC OCP (USA) [REDACTED]
Trivett, Clayton G CIV (USA) [REDACTED] ; Zelnis, Charles R CIV OSD OMC OCP (US)

Cc: OSD NCR OMC List MCDO Motions Distro [REDACTED]
Subject: RE: Request for Position -- Motion to Transfer AE 595W(WBA) to Chief Judge Douglas Watkins

Mr. Montross,

The Prosecution still does not have enough information regarding your claimed factual basis to disqualify Colonel Parrella to state a position on AE 595W.

The Prosecution will oppose any separate motion or relief to transfer AE 595W (WBA) to a different military judge.

Regards,

Clay Trivett

-----Original Message-----

From: Montross, William CIV (US) [REDACTED]
Sent: Tuesday, February 26, 2019 4:39 PM
To: CLAYTOGT [REDACTED] ; Perry, Edwin A CIV (USA) [REDACTED] Connell,
James G III CIV (USA) [REDACTED] ; Swann, Robert Lee CIV
OSD OMC OCP (USA) [REDACTED] ; Christopher M. Dykstra <[REDACTED]> ; Clay
Trivett [REDACTED] ; Cox, Dale J
(John) CIV OSD OMC OCP (US) [REDACTED] DALEJC [REDACTED] Dastoor, Neville F CPT
USARMY OSD OMC OCP (US) [REDACTED] ; Dykstra, Christopher M Maj USAF
OSD OMC OCP (US) [REDACTED] ; EDWARDR [REDACTED] ; Furr, Jeffery C
SSgt USMC OSD OMC OCP (US) [REDACTED] ; Gibbs, Rudolph P Jr CIV OSD OMC OCP (US)
[REDACTED] ; Groharing, Jeffrey D CIV OSD OMC OCP (USA)
[REDACTED] CTR OSD OMC OCP (US)
[REDACTED] CIV OSD OMC OCP (US)
[REDACTED] MSgt USAF OSD OMC
Jeff Groharing [REDACTED] JEFFERCF [REDACTED]
JEFFREDG [REDACTED] SSgt USMC OSD OMC OCP (USA)
[REDACTED] SSG USARMY (US) [REDACTED]
BENJAMM3 [REDACTED] ; Martins, Mark S BG USARMY OSD OMC OCP (US)
[REDACTED]
[REDACTED] ; Mills, Benjamin A Maj USMC OSD OMC OCP (US)
[REDACTED] ; HARIDIVT [REDACTED] Thravalos, Haridimos V CIV DLSA
(US) [REDACTED] ; NICOLEAT
[REDACTED] ; O'Sullivan, Michael J CIV OSD OMC OCP (US)
Tavarez-Patin, Pascual A CIV OSD OMC OCP (USA) [REDACTED] ; PASCUALT
[REDACTED] ; ROBERTLS [REDACTED] LTC USARMY OSD OMC OCP
(USA) [REDACTED] ; RUDOLPPG [REDACTED] ; Ryan, Ed (USANCW)
[REDACTED] ; Ryan, Edward R CIV (US) [REDACTED] ; Tate, Nicole A CIV (US)
[REDACTED] Capt USAF OSD OMC OCP (USA) [REDACTED]
Trivett, Clayton G CIV (USA) [REDACTED] ; Zelnis, Charles R CIV OSD OMC OCP (US)

Cc: OSD NCR OMC List MCDO Motions Distro [REDACTED]

Subject: Request for Position -- Motion to Transfer AE 595W(WBA) to Chief Judge Douglas Watkins

Trial Counsel:

AE 595W(WBA), Mr. bin 'Atash's Motion to Disqualify Colonel Keith Parrella as Military Judge Presiding in United States v. Mohammad, et al., will be filed on 27 February 2019.

Counsel for Mr. bin 'Atash intend to file a motion to transfer AE 595W(WBA) to Chief Judge Douglas Watkins.

Please state your position.

William Montross
Defense Counsel
Military Commissions Defense Organization

[Redacted]

-----Original Message-----

From: CLAYTOGT [Redacted]
Sent: Friday, February 22, 2019 2:52 PM
To: Perry, Edwin A CIV (USA) [Redacted]; Connell, James G III CIV (USA)
[Redacted]; Swann, Robert Lee CIV OSD OMC OCP (USA)
[Redacted]; Christopher M. Dykstra [Redacted]; Clay Trivett
[Redacted]; CLIFFODJ [Redacted]; Cox, Dale J (John)
CIV OSD OMC OCP (US) [Redacted]; DALEJC [Redacted]; Dastoor, Neville F CPT
USARMY OSD OMC OCP (US) [Redacted]; Dykstra, Christopher M Maj USAF OSD OMC
OCP (US) [Redacted]; EDWARDR [Redacted]; Furr, Jeffery C SSgt USMC
OSD OMC OCP (US) [Redacted]; Gibbs, Rudolph P Jr CIV OSD OMC OCP (US)
[Redacted]; Groharing, Jeffrey D CIV OSD OMC OCP (USA)
[Redacted] TR OSD OMC OCP (US)
[Redacted] my C CIV OSD OMC OCP (US) [Redacted] MSgt USAF OSD OMC OCP
(USA) [Redacted]; Jeff Groharing [Redacted];
JEFFERCF [Redacted]; JEFFREDG [Redacted]; SSgt USMC OSD
OMC OCP (USA) [Redacted]; SSG USARMY (US)
[Redacted]; BENJAMM3 [Redacted]; Martins, Mark S BG USARMY OSD
OMC OCP (US) [Redacted];
[Redacted]; Mills, Benjamin A Maj USMC OSD OMC OCP (US)
[Redacted]; HARIDIVT [Redacted]; Thravalos, Haridimos V CIV DLSA
(US) [Redacted]; NEVILLFD [Redacted]; NICOLEAT
[Redacted]; O'Sullivan, Michael J CIV OSD OMC OCP (US) [Redacted];
Tavarez-Patin, Pascual A CIV OSD OMC OCP (USA) [Redacted];
[Redacted] PASCUALT [Redacted]; ROBERTLS <[Redacted]>
[Redacted] LTC USARMY OSD OMC OCP (USA) [Redacted]; RUDOLPPG
[Redacted]; Ryan, Ed (USANCW) [Redacted]; Ryan, Edward R CIV (US)
[Redacted]; Tate, Nicole A CIV (US) [Redacted]; Capt
USAF OSD OMC OCP (USA) [Redacted]; Trivett, Clayton G CIV (USA)
[Redacted]; Zelnis, Charles R CIV OSD OMC OCP (US) [Redacted]
Cc: OSD NCR OMC List MCDO Motions Distro [Redacted]
Subject: [Non-DoD Source] RE: Request for Position -- Motion to Disqualify Military Judge Keith Parrella
(UNCLASSIFIED)

Mr. Perry,

Without knowing the purported factual basis of your motion to disqualify Colonel Parrella, the Prosecution cannot state its position on the motion.

Regards,

Clay Trivett

-----Original Message-----

From: Perry, Edwin A CIV (USA) [REDACTED]
 Sent: Friday, February 22, 2019 1:00 PM
 To: Connell, James G III CIV (USA) [REDACTED]; Swann, Robert Lee CIV OSD OMC OCP (USA) [REDACTED]; Christopher M. Dykstra [REDACTED]; Clay Trivett [REDACTED]; CLAYTOGT [REDACTED]; CLIFFODJ [REDACTED]; Cox, Dale J (John) CIV OSD OMC OCP (US) [REDACTED]; DALEJC [REDACTED]; Dastoor, Neville F CPT USARMY OSD OMC OCP (US) [REDACTED]; Dykstra, Christopher M Maj USAF OSD OMC OCP (US) [REDACTED]; Furr, Jeffery C SSgt USMC OSD OMC OCP (US) [REDACTED]; Gibbs, Rudolph P Jr CIV OSD OMC OCP (US) [REDACTED]; Groharing, Jeffrey D CIV OSD OMC OCP (USA) [REDACTED]; [REDACTED]; [REDACTED] CTR OSD OMC OCP (US) [REDACTED]; [REDACTED] CIV OSD OMC OCP (US) [REDACTED]
 <[REDACTED]>
 [REDACTED] MSgt USAF OSD OMC OCP (USA) [REDACTED]; Jeff Groharing [REDACTED]; JEFFERCF [REDACTED]; JEFFREDG [REDACTED]; [REDACTED] Jr SSgt USMC OSD OMC OCP (USA) [REDACTED]; [REDACTED] SSG USARMY (US) [REDACTED]; BENJAMM3 [REDACTED]; Mark S BG USARMY OSD OMC OCP (US) [REDACTED]; [REDACTED] Mills, Benj [REDACTED] MC OSD OMC OCP (US) [REDACTED]; HARIDIVT [REDACTED]; Thravalos, Haridimos V CIV DLSA (US) [REDACTED]; NEVILLFD [REDACTED]; > NICOLEAT [REDACTED]; O'Sullivan, Michael J CIV OSD OMC OCP (US) [REDACTED]; Tavaréz-Patin, Pascual A CIV OSD OMC OCP (USA) [REDACTED]; PASCUALT [REDACTED]; ROBERTLS [REDACTED]; [REDACTED] LTC USARMY OSD OMC OCP (USA) [REDACTED]; RUDOLPPG [REDACTED]; Ryan, Ed (USANCW) [REDACTED]; Ryan, Edward R CIV (US) [REDACTED]; Tate, Nicole A CIV (US) [REDACTED]; [REDACTED] Capt USAF OSD OMC OCP (USA) [REDACTED]; Trivett, Clayton G CIV (USA) [REDACTED]; Zelnis, Charles R CIV OSD OMC OCP (US) [REDACTED]
 Cc: OSD NCR OMC List MCDO Motions Distro [REDACTED]
 Subject: Request for Position -- Motion to Disqualify Military Judge Keith Parrella (UNCLASSIFIED)

CLASSIFICATION [REDACTED]

Trial Counsel:

Counsel for Mr. bin 'Atash intend to file a motion to disqualify Military Judge Keith Parrella, pursuant to R.M.C. 902(d)(1), cmt.

Please state your position.

Edwin A. Perry
 Defense Counsel
 Military Commissions Defense Organization Washington, DC Office: [REDACTED]
 [REDACTED]

CLASSIFICATION: UNCLASSIFIED