

**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 595JJ (KSM)

Notice of Filing of Motion for Stay
in the U.S. Court of Military
Commission Review

23 April 2019

1. **Timeliness**: This notice is timely filed.
2. **Notice**: Please take notice that, on 19 April 2019, in the U.S. Court of Military Commission Review Case Number 19-001, Mr. Mohammad filed a Motion for Leave to File a Motion for Stay and Motion for Stay. *See* Attachment B.
3. **Conference with Opposing Counsel**: No conference required. RC 3.5.i(3).
4. **List of Attachments**:
 - A. Certificate of Service
 - B. Petitioner Khalid Shaikh Mohammad’s Motion for Leave to File a Motion for Stay and Motion for Stay, CMCR Case Number 19-001, 19 April 2019.

Respectfully submitted,

//s//

DAVID Z. NEVIN
Learned Counsel

//s//

GARY D. SOWARDS
Defense Counsel

//s//

DEREK A. POTEET
LtCol, U.S. Marine Corps
Defense Counsel

//s//

RITA J. RADOSTITZ
Defense Counsel

Counsel for Mr. Mohammad

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on the 23rd day of April 2019, I electronically filed AE 595JJ (KSM), Notice of Filing of Motion for Stay in the U.S. Court of Military Commission Review, with the Chief Clerk of the Military Commissions Trial Judiciary and served the foregoing on all counsel of record by electronic mail.

//s//
DAVID Z. NEVIN
Learned Counsel

ATTACHMENT B

UNITED STATES COURT OF MILITARY COMMISSION REVIEW

In Re

KHALID SHAIKH MOHAMMAD,

Petitioner.

CMCR Case No. 19-001

**MOTION FOR LEAVE TO FILE A
MOTION FOR STAY AND MOTION
FOR STAY**

On Petition for Writ of Mandamus

Date: 19 April 2019

**TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES COURT OF MILITARY COMMISSION REVIEW**

Petitioner, Khalid Shaikh Mohammad (Mr. Mohammad), by counsel, respectfully requests leave to file this Motion for Stay of proceedings in his capital military commission while this Court reviews his Petition for a Writ of Mandamus filed with this Court on February 13, 2019 seeking the recusal of Military Judge Keith A. Parrella due to a disqualifying appearance of partiality. Because the Military Judge is proceeding with hearings despite his disqualifying appearance of partiality, in light of the recent ruling by the D.C. Circuit in *In re Al-Nashiri*,¹ the interests of justice demand that this court stay further proceedings in the Military Commission to ensure that no further error results from a possible finding by this Court that Military Judge Parrella should have recused himself.

¹ There are three reported opinions from the D.C. Circuit in Mr. Al Nashiri's case: *In re al-Nashiri*, 791 F.3d 71 (D.C. Cir. 2015) (*Al-Nashiri I*); *In re Al-Nashiri*, 835 F.3d 110, 113 (D.C. Cir. 2016) (*Al-Nashiri II*); and the most recent decision, *In re Al-Nashiri*, No 18-1279, slip opinion issued April 16, 2018 (referred to herein as *Al-Nashiri III*).

Mr. Mohammad hereby moves for a stay of proceedings in his capital military commission and asks that this motion for stay be decided expeditiously.

REASONS FOR GRANTING A STAY

As explained in detail in the Petition for Writ of Mandamus, Mr. Mohammad seeks a writ of mandamus vacating the order issued by Military Judge Keith A. Parrella below denying Mr. Mohammad's motion to recuse and for further discovery regarding the potential conflict of interest resulting from Military Judge Parrella's involvement with the very division of the DOJ that is prosecuting Mr. Mohammad in this capital case. Important matters have been newly added to the docket for the upcoming hearing session, scheduled to begin on 29 April 2019, thus an expedited review of this matter is requested.²

This week, in *Al-Nashiri III*, the D.C. Circuit determined that a military judge had a conflict of interest due to his employment application with the Department of Justice while presiding over a military commission case in which the DOJ was a participant, and therefore

² In addition to the possibility of harm created by having a Military Judge who should have recused himself continue to preside over these capital proceedings, Mr. Mohammad notes that his counsel are laboring under a potential conflict of interest prompted by a potential government investigation of and/or interference with the defense. This issue is pending before this Court in *In re Mohammad*, USCMCR Case No. 19-003. Mr. Mohammad's counsel have requested materials sufficient to allow the Military Judge to conduct an inquiry adequate for a reliable determination that defense counsel are not laboring under any conflicts of interest arising from the government's investigation or infiltration of the defense teams in the present case. There, like here, the Military Judge has not conducted an adequate inquiry, has denied Mr. Mohammad's repeated requests for more information, and is proceeding on important matters despite Mr. Mohammad being deprived of conflict free counsel as required by the Sixth Amendment. *See Holloway v. Arkansas*, 435 U.S. 475 (1978).

Among the matters which may be added to the docket for hearings beginning 29 April 2019 are AE 595FF (AAA), Mr. al Baluchi's Motion to Reconsider the Military Judge's Denial of Recusal, 18 April 2019. *See* AE 595GG, EXPEDITED BRIEFING ORDER, Mr. al Baluchi's Motion To Reconsider the Military Judge's Denial of Recusal, 18 April 2019 (granting prosecution five days to respond, and the defense one day to reply).

specifically held that the DOJ was a “party” to military commission proceedings. This holding invalidates Military Judge Parrella’s core finding in his denial of the motion to recuse, in which he held that “the Military Judge and DOJ prosecutors assigned to this case effectively worked for two separate government agencies during the Military Judge’s fellowship year (2014-2015).”³ The D.C. Circuit ruling in *Al-Nashiri III* shows this finding by Military Judge Parrella to be clearly erroneous, and because he has been directly associated with a party—the DOJ—he should recuse himself to ensure that the appearance of partiality does not further taint these military commissions in the eyes of the public, and because his failure to do so violates Mr. Mohammad’s Fifth, Sixth and Eighth Amendment rights.

ARGUMENT

“In no proceeding is the need for an impartial judge more acute than one that may end in death.”⁴ Further, “this much is clear: whenever and however military judges are assigned, rehired, and reviewed, *they must always maintain the appearance of impartiality* demanded by Rule for Military Commission 902(a). It would seem, therefore, that some additional “encourag[ement] . . . to *more carefully examine possible grounds for disqualification,*” *Liljeberg*, 486 U.S. at 868, would be especially “appropriate under the circumstances,” *Cheney*, 542 U.S. at 381.” *Al-Nashiri III* slip opinion at 28 (emphasis added).

To avoid irreparable injury to Mr. Mohammad and to the public’s faith and confidence in the integrity of the military commissions being conducted at Guantanamo Bay, Cuba, and because it is in the interests of judicial economy and justice, this Court should temporarily stay further military commission proceedings involving Mr. Mohammad until such time as this Court

³ AE5950 Ruling, Defense Motion to Recuse Military Judge, Colonel Parrella at 3.

⁴ *Al-Nashiri III*, slip opinion at p. 27.

has had the opportunity to review and rule upon Mr. Mohammad's Petition for Writ of Mandamus seeking the recusal of Military Judge Parrella.

A STAY OF PROCEEDINGS IS NECESSARY TO AVOID IRREPARABLE INJURY TO MR. MOHAMMAD AND THE MILITARY COMMISSIONS SYSTEM.

“The authority to grant stays has historically been justified by the perceived need ‘to prevent irreparable injury to the parties or to the public’ pending review.” *Nken v. Holder*, 556 U.S. 418, 432 (2009). “The factors to be considered in determining whether a stay is warranted are: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay.” *WMATA v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir.1977). All “four factors have typically been evaluated on a sliding scale,” *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1291 (D.C. Cir. 2009) (internal quotation marks omitted), with the first two factors being the most important, *see, Nken*, 556 U.S. at 434. “The test is a flexible one [and] injunctive relief may be granted with either a high likelihood of success and some injury, or vice versa.” *Cuomo v. U.S. Nuclear Regulatory Comm’n*, 772 F.2d 972, 974 (D.C. Cir. 1985).

Mr. Mohammad independently satisfies each of the four factors.

1. Mr. Mohammad has made a substantial case on the merits.

With respect to the likelihood of success on the merits, the crucial question is not whether the movant's “right to a final decision, after a trial, be absolutely certain, wholly without doubt[.]” *Holiday Tours*, 559 F.2d at 844. Instead, it is whether he has made “a substantial case on the merits.” *Id.* at 843. For the reasons set forth in his Petition, Mr. Mohammad has presented a substantial case on the merits regarding the apparent or actual bias

of the Military Judge. Specifically, the D.C. Circuit has now held that the DOJ is a “party” to military commission proceedings.⁵ In fact, one of the facts behind this conclusion is that the Attorney General “has loaned out one of his prosecutors,” a precise description of the situation in the present case. Therefore, from 2014 to 2015, Military Judge Parrella worked for a party to this case. And, contrary to the Military Judge’s previous findings, it is not whether he worked directly on this case, but the fact that he is directly associated with a party that is decisive. Indeed, the observation and finding of the Court in *al Nashiri III* has even more potency under the circumstances of the present case, where the former employee, in the form of the Military Judge, limited the defense discovery of, and preemptively denied the motion for relief based on, DOJ’s involvement in unlawful command influence related to the firing of the Convening Authority.⁶ The substantive ruling was made while requests for witnesses regarding DOJ involvement were still pending.⁷ Military Judge Parrella’s close association with a party to the case before him results in a disqualifying appearance of partiality.

Further, and as importantly, Mr. Mohammad has presented a compelling need for further discovery regarding Military Judge Parrella’s prior work with the very division of the Department of Justice that “loaned out” and detailed some of the lawyers who serve on the

⁵ *Al-Nashiri III slip opinion* at 20-22.

⁶ See AE 555EEE, RULING, Mr. al Baluchi’s Motion to Dismiss For Unlawful Influence over Convening Authority and Legal Advisor, 10 January 2019.

⁷ *Id.*, also see, e.g., the following:

- AE 555CC (AAA), Mr. al Baluchi’s Second Motion to Compel Production of Witnesses Whose Testimony is Relevant and Necessary to Address the Pending Interlocutory Question in AE 555 (AAA), 26 July 2018;
- AE 555CC (KSM Sup), Mr. Mohammad’s Supplement to AE 555CC, 2 January 2019; and
- AE555R (AAA), Mr. al Baluchi’s Motion to Compel Production of Witnesses Whose Testimony is Relevant and Necessary to Address the Pending Interlocutory Question in AE555 (AAA), 18 June 2018.

prosecution team,⁸ including one with whom Military Judge Parrella had a close association, Marine Corps Reserve Judge Advocate Jeffrey Groharing, who in a civilian capacity is one of the DOJ attorneys actively prosecuting Mr. Mohammad.⁹ Special Trial Counsel in this case—the self-described “Special Review Team”—include five additional DOJ attorneys¹⁰ who are active participants in this case, sometimes via sealed filings and *ex parte* hearings, the contents of which are kept secret from the defense in this capital case. Military Judge Parrella’s relationship with Mr. Groharing raises the question of whether it could be perceived as a relationship that might “influence the judge’s judicial conduct or judgment.”¹¹

Additionally, Military Judge Parrella “assumed command of Region 8 (Central Europe), Marine Corps Embassy Security Group, Frankfurt, Germany [in July 2012]. As Region 8’s Commanding Officer, he led approximately 160 Marine Security Guards posted at 19 U.S. Embassies and Consulates throughout central Europe and the Balkans.”¹² Information

⁸ Department of Justice attorneys Jeffrey Groharing and Clayton Trivett have been detailed to prosecute Mr. Mohammad since before his May 2012 arraignment. *See* AE 003 TRIAL COUNSEL DETAILING MEMORANDUM, 4 April 2012. DOJ attorney Mr. Trivett has subsequently become Managing Trial Counsel for the prosecution in this case. An additional DOJ attorney Mr. Edward Ryan is currently also on the regular prosecution team in this case. *See* AE 003M (GOV) TRIAL COUNSEL DETAILING MEMORANDUM, 8 Feb 2018.

⁹ Transcript, 20455-20456, 20532-20533. Military Judge Parrella also “may have” socialized with another member of the trial counsel team, Mr. Clayton Trivett. *Id.*

¹⁰ AE 003L, SPECIAL TRIAL COUNSEL DETAILING MEMORANDUM, 28 October 2016, (Detailing five DOJ attorneys. A sixth Special Trial Counsel is listed therein as being a Judge Advocate with the Department of Defense. On information and belief, this individual is a military reservist whose full-time civilian employer is the Department of Justice.)

¹¹ Rule 2.4 of the Model Code of Judicial Conduct.

¹² AE 001B Biography of Col Keith Parrella. Unlike the Army and the Navy, the U.S. Marine Corps does not have any staff corps. Accordingly, Marine Corps Judge Advocates may be assigned to billets outside the legal field, including being selected for commanding officer billets. *See* MARINE CORPS ORDER 1300.64B, COMMAND SCREENING PROGRAM (CSP), 23 March 2017, Enclosure 1 at page 1-2 (“Any MOS Commands”); *available at* https://www.marines.mil/Portals/59/Publications/MCO%201300.64B_Final_MK.pdf?ver=2017-04-05-071442-330.

regarding this prior training is relevant specifically to the question of whether Military Judge Parrella has received information through the position that would impact his ability to make an independent judgement on national security related issues such as the jurisdictional question of “hostilities.” The government relies on the attacks on the U.S. Embassies in Kenya and Tanzania as part of their allegation that the United States was engaged in hostilities with al Qaida, and it would be expected that anybody in charge of security at U.S. Embassies would be trained specifically on any perceived terrorist threats.¹³ Military Judge Parrella refused to provide further information regarding his training for that position¹⁴ so it is impossible to know exactly what information he might have received and whether it has an improper influence on his decisions in the military commissions.

Publicly available Marine Corps manuals, however, shed light on the scope and nature of Military Judge Parrella’s responsibilities while Region 8’s Commanding Officer. The Marine Corps Embassy Security Group Training and Readiness Manual requires that all Marines assigned to embassy security receive “specialized training” related to their designated country and undergo a “polygraph examination.”¹⁵ Additionally, the Marine Corps

¹³ A 2011 exhibit by the Department of State’s Bureau of Diplomatic Security featured the Marine Security Guard program. One panel in the exhibit was devoted exclusively to the threat posed to embassies by terrorism and referred to the attacks on the U.S. Embassies in Kenya and Tanzania as “Diplomatic Security’s 9/11.” Al-Qaida is referenced by name three times throughout the exhibit, which was displayed in both the National Museum of the Marine Corps and the Department of State. *Available at* <https://www.state.gov/m/ds/rls/c50764.htm>.

¹⁴ *See* Transcript at 20416 (“As to AE 595A, I am not going to order the discovery requested, but invite counsel to ask questions related to the matter during voir dire.”) *See, e.g.*, AE 595A (WBA), Defense Motion to Compel Material and Information Related to the Qualifications of Judge Keith Parrella (7 September 2018), Attachment M (request for discovery of “All writings, memoranda, communications, and other material authored by, adopted by, or distributed to Judge Parrella regarding the investigation and/or prosecution of the attacks on 11 September 2001.”)

¹⁵ U.S. MARINE CORPS, NAVMC 3500.98B, MARINE CORPS EMBASSY SECURITY GROUP TRAINING AND READINESS MANUAL, enclosure 1, at 3-7 (16 Aug 2018), *available at* <https://www.marines.mil/Portals/59/Publications/NAVMC%203500.98B%20Marine%20Corps>

Counterintelligence Manual states that “[i]ntelligence and [counterintelligence] are inherent and essential command responsibilities that require the *personal involvement of the commander*.”¹⁶ (Emphasis added.) Counterintelligence operations require surveillance of “vulnerabilities to specific hostile intelligence, espionage, sabotage, subversion or terrorist capabilities,” and planning “procedures for detecting and monitoring the activities of hostile intelligence and terrorist organization” *Id.* at para. 1004. Accordingly, it is evident that Military Judge Parrella was required to remain apprised of terrorist activities and to ensure the Marines under his command received specific training on the threats posed by terrorist organizations.

Further, during voir dire, Military Judge Parrella informed the parties that he has been selected to become Commanding Officer of the Marine Corps Embassy Security Group (MCESG) in the summer of 2019.¹⁷ He has not notified the parties of any change in that assignment status. On March 27, 2019, defense counsel requested an update on those plans. Military Judge Parrella has so far declined to respond beyond stating that he will follow his orders.¹⁸ It is also evident to the impartial observer that Military Judge Parrella’s remarkable

[%20Embassy%20Security%20Group%20T-R%20Manual.pdf?ver=2018-09-13-122924-923.](https://www.marines.mil/Portals/59/Publications/MCRP%202-10A.2%20(Formerly%20MCWP%202-6).pdf?ver=2016-06-01-135919-697)

¹⁶ U.S. MARINE CORPS, MCRP 2-10A.2, COUNTERINTELLIGENCE para. 3002 (2 May 2016), available at [https://www.marines.mil/Portals/59/Publications/MCRP%202-10A.2%20\(Formerly%20MCWP%202-6\).pdf?ver=2016-06-01-135919-697](https://www.marines.mil/Portals/59/Publications/MCRP%202-10A.2%20(Formerly%20MCWP%202-6).pdf?ver=2016-06-01-135919-697).

¹⁷ Prestigiously, Colonel Parrella has twice been selected for command; first as a Lieutenant Colonel commanding Region 8 of the MCESG, and more recently, as a Colonel, to become Commanding Officer over the entire MCESG, with embassy security responsibilities worldwide. See MARADMIN 425/18, FY19 COLONEL COMMAND SCREENING BOARD RESULTS, 1 Aug 2018, available at <https://www.marines.mil/News/Messages/Messages-Display/Article/1590978/fy19-colonel-command-screening-board-results/>; and MARADMIN 453/11, FY12 LIEUTENANT COLONEL COMMAND SCREENING BOARD RESULTS, 11 Aug 2011, available at <https://www.marines.mil/News/Messages/MARADMINS/Article/888022/fy12-lieutenant-colonel-command-screening-board-results/>.

¹⁸ Transcript at 22664. (LDC [MR. CONNELL] “I was trying to politely inquire if there was a status update that the parties should know about. MJ [Col PARRELLA]: Yeah. Let me give it

(if not unprecedented) dual assignment in these circumstances, to both judicial and command billets involving U.S. national security and official attitudes toward the defendant Mr. Mohammad, creates a conflict of interest because the manner in which he performs his current duties reasonably could be expected to influence whether he is allowed to assume his future prestigious commanding officer billet which he has been promised.

Disturbingly similar to the situation in *Al-Nashiri III*, “[t]he prosecution, upon receiving the defense’s request for discovery . . . refused to investigate the matter.” *Al-Nashiri III* at 27. The Military Judge denied the defense motion to compel discovery, and also refused requests during oral argument to provide further documentation on his relationship with Mr. Groharing, his employment within the Department of Justice or whether his position as head of U.S. Embassy security involved communications regarding the investigation and/or prosecution of the attacks on 11 September 2001 as had been requested as discovery by the defense.

For the reasons set forth in the Petition for Writ of Mandamus, Mr. Mohammad has met the burden of presenting “a substantial case on the merits” regarding the necessity of further discovery regarding Military Judge Parrella’s prior work for the Department of Justice, his training regarding threats to American Embassies, his relationship with Mr. Groharing, and the appearance of bias that undermines public perception of the Military Commissions. Thus, in *Al-Nashiri III*, the Court held: “we cannot permit an appearance of partiality to infect a system of justice that requires the most scrupulous conduct from its adjudicators.” The Court went on: “[f]or the appearance of bias demeans the reputation and integrity not just of one jurist, but of the

some thought, and we can maybe address that at the next session, assuming we are back on the record here tomorrow.”)

larger institution of which he or she is a part.” Citing *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1909 (2016).¹⁹

2. Mr. Mohammad will be irreparably harmed if a stay is not granted.

With respect to a showing of irreparable harm, the Military Judge has proceeded with hearings, taking pleadings and argument on important motions despite his apparent or actual bias. The D.C. Circuit has repeatedly held that in Military Commissions cases mandamus provides “an appropriate vehicle for seeking recusal of a judicial officer during the pendency of a case, as ‘ordinary appellate review’ following a final judgment is ‘insufficient’ to” remove the insidious taint of judicial bias. *In re Mohammad*, 866 F.3d 473, 475 (D.C. Cir. 2017) (quoting *Al-Nashiri I*, 791 F.3d at 79). As the D.C. Circuit noted again this week, “[u]nbiased, impartial adjudicators are the cornerstone of any system of justice worthy of the label. And because ‘[d]eference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges,’ jurists must avoid even the appearance of partiality.” *Al-Nashiri III* slip opinion at 17 (quoting *United States v. Microsoft Corp.*, 253 F.3d 34, 115 (D.C. Cir. 2001)).

All parties to the military commission will be harmed if a reviewing court finds merit to the position that Military Judge Parrella should have provided further discovery and/or recused himself. The interests of the parties – and the interests of judicial economy – would be well served by staying proceedings until the issue of judicial bias is properly resolved.²⁰

¹⁹ *Al-Nashiri III* slip opinion at 30.

²⁰ As the D.C. Circuit reiterated *Al-Nashiri III*, “If a judge ‘should have been recused from the . . . proceedings, then any work produced’ by that judge ‘must also be ‘recused’—that is, suppressed.” *Slip opinion* at 25 (quoting *In re Brooks*, 383 F.3d 1036, 1044 (D.C. Cir. 2004)).

3. Others will not be harmed if the court grants the stay.

The only risk of potential prejudice by this Court granting a stay of proceedings while review of Mr. Mohammad's Petition for Writ of Mandamus is that sort generally attendant to necessary postponements in criminal cases. Such generalized and merely potential prejudice is insufficient to counterbalance the real harm that Mr. Mohammad is suffering through the continuation of proceedings before a Military Judge who has an actual or apparent bias or conflict of interest.

4. The public has a great interest in an unbiased judge in death penalty cases.

The public evaluating the fairness and integrity of the military commission process will look first to the impartiality of the presiding judge. "[A]ll that must be demonstrated to compel recusal," then, is "a showing of an appearance of bias . . . sufficient to permit the average citizen reasonably to question a judge's impartiality." *United States v. Heldt*, 668 F.2d 1238, 1271 (D.C. Cir. 1981). "[T]he public's interest in efficient justice is no greater than its interest in impartial justice. Any institution that wields the government's power to deny life and liberty must do so fairly, as the public's ultimate objective is not in securing a conviction but in achieving a just outcome." *Al-Nashiri III*, slip opinion at 29.

As a result of the actions of the government refusing discovery, and the denial by the Military Judge of the efforts of Mr. Mohammad's counsel to ascertain whether the Military Judge has a disqualifying appearance of partiality, Mr. Mohammad is being deprived of his right to due process in his ongoing capital case in violation of the Military Commissions Act of 2009, the Fifth, Sixth and Eighth Amendments, and binding requirements of international law.

The actual or apparent bias, or a "disqualifying appearance of partiality" as the *al-Nashiri III* court phrased it, of the Military Judge in a death penalty case will reduce public trust in the

military commission system. Absent a stay of these proceedings, important matters are being argued and decided²¹ which could be a matter of life and death for Mr. Mohammad, before a Military Judge who should have recused himself, and are being decided before this Court has addressed Mr. Mohammad's petition for a writ of mandamus. A stay from this Court would heighten public confidence because it would prevent further prejudice to Mr. Mohammad which cannot be resolved through any other mechanism.

CONCLUSION

Mr. Mohammad moves this Court to stay further military commission proceedings in his case until such time as this Court has the opportunity to consider Mr. Mohammad's Petition for a Writ of Mandamus.

Respectfully submitted,

//s//
DAVID Z. NEVIN
Learned Counsel

//s//
GARY D. SOWARDS
Defense Counsel

//s//
DEREK A. POTEET
LtCol, U.S. Marine Corps
Defense Counsel

//s//
RITA J. RADOSTITZ
Defense Counsel

Counsel for Mr. Mohammad

²¹ And, as the D.C. Circuit affirmed in *Al-Nashiri III*, "If a judge 'should have been recused from the . . . proceedings, then any work produced' by that judge 'must also be 'recused'—that is, suppressed.' *In re Brooks*, 383 F.3d 1036, 1044 (D.C. Cir. 2004)." *Al-Nashiri III slip opinion* at 25.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent via electronic mail to the Clerk of the U.S. Court of Military Commission Review and all parties of record on the 19th day of April 2019.

//s//

David Z. Nevin
Learned Counsel

Counsel for Mr. Mohammad