

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

AE611I (AAA)

Mr. al Baluchi's Response to AE611 (Sup)
Docket Order
(Proposed Order of March)

4 January 2019

1. **Timeliness:** This proposed order of march is timely filed.
2. **Overview:** Mr. al Baluchi respectfully proposes the following order of march for hearings conducted pursuant to RMC 803(a) in January-February 2019:

Open session I

Discovery: AE432, AE538

Law of war: AE490, AE502CCCC, AE510, AE512, AE513, AE514, AE557

Mental health notice: AE614

Objections to closed hearing on unclassified testimony: AE350RRR

Closed 505(h) session

Attorney/client meeting spaces: AE133RR

Discovery: AE561

Protective Order issues: AE118, AE574G, AE599, AE600, AE601

Classified issue: AE575

Testimony (Wednesday)¹

Former CIA Interpreter: AE350RRR

Open session 2

Attorney/client meeting spaces: AE133RR

Torture/interrogation discovery: AE561

Protective Order issues: AE118, AE574G, AE599, AE600, AE601

Classified issue: AE575

Closed 806 session²

Attorney/client meeting spaces: AE133RR

Torture/interrogation discovery: AE538, AE561

Protective Orders: AE118, AE574G, AE599, AE600, AE601

Law of war: AE490, AE502CCCC, AE510, AE512, AE513, AE514

Classified issue: AE575

¹ Mr. al Baluchi consulted with the government, which indicated its tentative preference that testimony take place on Wednesday. Mr. al Baluchi objects to the aspect of AE350RRR ordering a closed hearing on unclassified testimony without any evidence of factors justifying closure, particularly in the light of lack of consideration of less restrictive means of protecting the identity of the witness. *See* 10 U.S.C. § 949d(c)(2); *Press-Enterprise v. Superior Court*, 478 U.S. 1, 15 (1986); RMC 806; RTMC 20-7. The considerations governing open proceeding have been briefed extensively, and are incorporated by reference here. *See* AE013A Motion of the American Civil Liberties Union for Public Access to Proceedings and Records; AE013A (Sup) Supplemental Motion of the American Civil Liberties Union for Public Access to Proceedings and Records; AE013E Mr. al Baluchi's Motion to Join and Adapt the American Civil Liberties Union Motion for Public Access to Proceedings and Records; AE081 Request by Press Intervenors for Notice and Opportunity to be Heard on Any Application Seeking to Limit Public Access to Proceedings or Records and for Timely Access to Filings; AE136A (AAA) Mr. al Baluchi's Response to Government Motion Regarding Accused's Presence During Closed Proceedings.

² This proposed order of march for the closed sessions assumes that the military commission rules that all motions for which notice has been given under MCRE 505(h) require closed hearings.

3. **Argument:**

The military commission has already ordered the following issues for argument or evidence at the January-February 2019 hearing:³

AE350RRR Testimony of the Former CIA Interpreter Utilized by Some Defense Teams;⁴

AE538 (AAA) Defense Motion to Compel FBI Manual for Terrorism Interrogation;⁵

³ AE611 (Sup) Supplemental Docket Order.

⁴ AE350RRR Order. The issue originally arose on 9 February 2015. Unofficial Unauthenticated Transcript of 9 February 2015 at 8248-52. The parties argued the issue on 11 February 2015, 25 October 2015, 29 October 2015, 17 February 2016, 7 December 2016, 16 May 2017, 24 August 2017, 16 October 2017, 8 January 2018, 26 February 2018, 23 July 2018, 25 July 2018, 14 November 2018, and 16 November 2018. Unofficial/Unauthenticated Transcript of 11 February 2015 at 8265-84, 8336-44; Unofficial/Unauthenticated Transcript of 25 October 2015 at 8709-14; Unofficial/Unauthenticated Transcript of 29 October 2015 at 8978-9038; Unofficial/Unauthenticated Transcript of 17 February 2016 at 10305-06; Unofficial/Unauthenticated Transcript of 7 December 2016 at 14388-95; Unofficial/Unauthenticated Transcript of 16 May 2017 at 15861; Unofficial/Unauthenticated Transcript of 24 August 2017 at 16215; Unofficial/Unauthenticated Transcript of 16 October 2017 at 16645; 8 January 2018 at 18334-35; Unofficial/Unauthenticated Transcript of 26 February 2018 at 18900-01; Unofficial/Unauthenticated Transcript of 23 July 2018 at 20108; Unofficial/Unauthenticated Transcript of 25 July 2018 at 20117; Unofficial/Unauthenticated Transcript of 14 November 2018 at 21482-527; Unofficial/Unauthenticated Transcript of 16 November 2018 at 21885 (Mr. al Baluchi does not yet have access to the classified transcript of 16 November 2018, and part of the transcript has not yet been released in redacted form). In AE350RRR, the military commission has ordered a closed hearing pursuant to RMC 806.

⁵ At a 505(h) hearing on 2 May 2018, the parties made comments on AE538. AE412R Official/Unauthenticated Transcript of 2 May 2018 at 8-9. At a closed hearing on 3 May 2018, the government made additional comments relevant to AE538. Official/Unauthenticated Transcript of 3 May 2018 [T. 5/3/18] at 19382-89. The parties argued AE538 in open session on 25 July 2018, and in closed session on 26 July 2018. Unofficial/Unauthenticated Transcript of 25 July 2018 at 20182-240; T. 7/26/18 at 19817-58. On 13 November 2018, the parties made additional comments on AE538. Unofficial/Unauthenticated Transcript of 13 November 2018 [T. 11/13/18] at 21122-28. On 14 November 2018, the military commission deferred argument on AE538. Unofficial/Unauthenticated Transcript of 14 November 2018 at 21570-71. The military commission has authorized the use of classified information in a closed session. AE538G Ruling; AE538J Ruling.

AE561 (AAA) Defense Motion to Compel Information Regarding Non-CIA Requests for Black Site Interrogation;⁶

AE574G (AAA) Mr. al Baluchi's Motion to Rescind Protective Order #3 or, in the Alternative, Dismiss the Charges Against Him;⁷

AE575 (GOV) Classified Filing;⁸

AE599 (WBA) Classified Motion to Compel Discovery;⁹

AE600 (AAA) Mr. al Baluchi's Motion to Compel Discovery Requested in DR-280-AAA;¹⁰

AE601 (AAA) Mr. al Baluchi's Motion to Dismiss or, in the Alternative, to Suppress Evidence the Government Intends to Introduce in Violation of the Confrontation Clause;¹¹

⁶ At a closed hearing on 3 May 2018, the government made comments relevant to AE561. T. 5/3/18 at 19382-89. The parties argued AE561 on 23 July 2018. Unofficial/Unauthenticated Transcript of 23 July 2018 at 19964-93. The government offered additional commentary on AE561 during argument on AE538 on 25 July 2018. Unofficial/Unauthenticated Transcript of 25 July 2018 at 20182-240. The parties argued both AE561 and AE538 in closed session on 26 July 2018. T. 7/26/18 at 19817-60. The parties argued AE561 again on 12 November 2018. Unofficial/Unauthenticated Transcript of 12 November 2018 at 21077-84. On 13 November 2018, the parties made additional comments on AE561. T. 11/13/18 at 21122-28. The military commission has authorized the use of classified information in a closed session. AE561D Ruling; AE561F Ruling. AE561G (AAA) Defense Notice Pursuant to MCRE 505(g)(1)(a) requires a 505(h) hearing.

⁷ AE574H (AAA) Defense Notice Pursuant to MCRE 505(g)(1)(a) requires a 505(h) hearing.

⁸ AE575C (AAA) Defense Notice Pursuant to MCRE 505(g)(1)(a) and AE575E (WBA) Defense Notice Pursuant to MCRE 505(g)(1)(a) require a 505(h) hearing.

⁹ AE599D (WBA) Defense Notice Pursuant to MCRE 505(g)(1)(a) requires a 505(h) hearing. Mr. al Baluchi is not joined to AE599. AE599B (AAA) Mr. al Baluchi's Motion to Decline Joinder.

¹⁰ AE600A (AAA) Defense Notice Pursuant to MCRE 505(g)(1)(a) requires a 505(h) hearing.

¹¹ AE601A (AAA) Defense Notice Pursuant to MCRE 505(g)(1)(a) requires a 505(h) hearing.

AE614 (GOV) Government Motion to Compel Notice of Intent to Introduce Expert Mental Health Evidence.

Mr. al Baluchi respectfully requests to add the following motions for argument in January-February 2019:

AE118 (WBA, AAA) Motion to Abate Proceedings Pending Compliance with Protective Order #1;¹²

AE133RR (AAA) Mr. al Baluchi's Motion to Permanently and Verifiably Disable Audio Monitoring Capability in Attorney-Client Meeting Rooms;¹³

AE432 (AAA) Mr. al Baluchi's Motion to Compel Production of Policies and Procedures for the Collection and Preservation of Evidence from Detainees;

¹² At a 505(h) hearing on 8 December 2016, Mr. al Baluchi withdrew some aspects of AE118. AE412D Official/Unauthenticated Transcript of 8 December 2016 at 4-9; *see also* AE118G (AAA Sup) Mr. al Baluchi's Motion to Partially Withdraw AE118G 505(g) Notice. The parties previously argued AE118 on 20, 21, and 23 March 2017. Unofficial/Unauthenticated Transcript of 20 March 2017 at 14787-816; Unofficial/Unauthenticated Transcript of 20 March 2017 at 14820-25; Official/Unauthenticated Transcript of 23 March 2017 at 14990-91. The military commission has previously authorized presentation of classified information in a closed hearing. AE118I Order. AE118K (AAA) requires a MCRE 505(h) hearing.

¹³ The parties previously argued AE133RR on 24 August 2017, 16 October 2017, 26 February 2018, and 25 July 2018. Unofficial/Unauthenticated Transcript of 24 August 2017 at 16277-83, 16290-98; Unofficial/Unauthenticated Transcript of 16 October 2017 at 16553-74; Unofficial/Unauthenticated Transcript of 26 February 2018 at 18902-05; Unofficial/Unauthenticated Transcript of 25 July 2018 at 20153-55. In AE133VV Ruling, the military commission approved use of classified information in a closed hearing, as noticed in AE133UU (AAA) Defense Notice Pursuant to MCRE 505(g)(1)(A). On 29 June 2018, Mr. al Baluchi gave notice of additional classified information in AE133YY (AAA) Defense Notice Pursuant to MCRE 505(g)(1)(A). In AE607 Trial Conduct Order, the military commission ordered all unaddressed MCRE 505(g) notices dated on or before 15 August 2018 to be moot, without prejudice to providing additional notice of the same information. In AE133CCC (AAA) Defense Notice Pursuant to MCRE 505(g)(1)(A), Mr. al Baluchi provided notice of the information previously noticed in AE133YY as well as new information. AE133CCC requires a MCRE 505(h) hearing.

AE502CCCC (AAA) Mr. al Baluchi's Motion to Schedule Evidentiary Hearing Regarding Personal Jurisdiction.¹⁴

The following motions were argued before Military Judge Pohl but have not been decided by the military commission. Mr. al Baluchi respectfully suggests that the parties re-argue the following motions:

AE490 (MAH) Defense Motion to Dismiss Charges I, VI, VII Due to Lack of Jurisdiction Based on *Ex Post Facto* Violation;¹⁵

¹⁴ Although AE502CCCC is an independent motion, its predicates include AE488 (MAH) Defense Motion to Dismiss for Lack of Subject Matter Jurisdiction Due to the Absence of Hostilities and AE502 (MAH) Defense Motion to Dismiss for Lack of Personal Jurisdiction due to the Absence of Hostilities. The parties argued the procedural aspects of jurisdictional challenges on 24 March 2017 and 15 May 2017. Unofficial/Unauthenticated Transcript of 24 March 2017 at 15521-41; Unofficial/Unauthenticated Transcript of 24 March 2017 at 15649-748. The parties argued additional aspects of AE502 on 21 August 2017, 19-20 October 2017, and 20 January 2018. Unofficial/Unauthenticated Transcript of 21 August 2017 at 16061-107; Unofficial/Unauthenticated Transcript of 19 October 2017 at 16908-7023; Official/Unauthenticated Transcript of 20 October 2017 at 16828-44; Unofficial/Unauthenticated Transcript of 10 January 2018 at 18434-94. Mr. al Hawsawi and the government presented evidence on 5-8 December 2017. Unofficial/Unauthenticated Transcript of 5 December 2017 at 17352-502; Unofficial/Unauthenticated Transcript of 6 December 2017 at 17533-744; Unofficial/Unauthenticated Transcript of 7 December 2017 at 17786-8035; Official/Unauthenticated Transcript of 7 December 2017 at 17662-75; Unofficial/Unauthenticated Transcript of 8 December 2017 at 18141-280; Official/Unauthenticated Transcript of 8 December 2017 at 17889-95.

¹⁵ Mr. al Baluchi's separate positions are found at AE490A (AAA) Mr. al Baluchi's Motion to Decline Joinder in Part and Separate Position Regarding AE490 (MAH) Defense Motion to Dismiss Charges I, VI, VII Due to Lack of Jurisdiction Based on *Ex Post Facto* Violation and AE490F (AAA) Mr. al Baluchi's Reply to Government Response to Defense Motion Defense Motion to Dismiss Charges I, VI, VII Due to *Ex Post Facto* Violation. The parties argued AE490 on 16 May 2017. Unofficial/Unauthenticated Transcript of 16 May 2017 at 15752-844.

AE510 (AAA) Mr. al Baluchi's Motion to Compel Information Relating to Operation INFINITE REACH;¹⁶

AE512 (AAA) Defense Motion to Compel Information Related to Operation INFINITE RESOLVE;¹⁷

AE513 (AAA) Mr. al Baluchi's Motion to Compel Information Regarding Covert Action;¹⁸

AE514 (AAA) Mr. al Baluchi's Motion to Compel Information regarding Political-Military Plan;¹⁹

AE557 (KSM) Defense Motion Regarding Discovery Regarding the Attack on the USS COLE;²⁰

AE581 (AAA) Mr. al Baluchi's Motion to Compel Unredacted Version of MEA-BKG-00003602.²¹

¹⁶ The parties argued AE510 on 18 October 2017 and 26 July 2018. Unofficial/Unauthenticated Transcript of 18 October 2017 [T. 10/18/17] at 16823-63; Official/Unauthenticated Transcript of 26 July 2018 [T. 7/26/18] at 19781-90.

¹⁷ The parties argued AE512 on 10 January 2018 and 26 July 2018. Unofficial/Unauthenticated Transcript of 10 January 2018 at 18496-520; T. 7/26/18 at 19790-91.

¹⁸ The parties argued AE513 on 25-26 July 2018. Unofficial/Unauthenticated Transcript of 25 July 2018 at 20240-79; T. 7/26/18 at 19791-801.

¹⁹ The parties argued AE514 on 18 October 2017 and 26 July 2018. T. 10/18/17 at 16863-89; T. 7/26/18 at 19863-72.

²⁰ The parties argued AE557 on 23 July 2018. Unofficial/Unauthenticated Transcript of 25 July 2018 at 20070-105.

²¹ The parties argued AE581 on 26 July 2018. Official/Unauthenticated Transcript of 26 July 2018 at 19862-72.

4. **Attachments:**

A. Certificate of Service

B. Prayer times

Very respectfully,

//s//

JAMES G. CONNELL, III
Learned Counsel

//s//

STERLING R. THOMAS
Lt Col, USAF
Defense Counsel

//s//

ALKA PRADHAN
Defense Counsel

//s//

BENJAMIN R. FARLEY
Defense Counsel

//s//

MARK E. ANDREU
Capt, USAF
Defense Counsel

Counsel for Mr. al Baluchi

Attachment A

CERTIFICATE OF SERVICE

I certify that on the 4th day of January, 2019, I electronically filed the foregoing document with the Clerk of the Court and served the foregoing on all counsel of record by email.

//s//

JAMES G. CONNELL, III

Learned Counsel

Attachment B

UNCLASSIFIED//FOR PUBLIC RELEASE

Prayer times for Guantanamo Bay Naval Base (Cuba)

High Latitude Method:None

Prayer Calculation Method:Muslim World League

Asar Calculation Method:Shafi

01 January 2019 - 31 January 2019

Date	Day	Fajr	Sunrise	Zohar	Asar	Magrib	Isha
1	Tue	5:17	6:36	12:04	3:11	5:33	6:47
2	Wed	5:18	6:36	12:05	3:12	5:34	6:48
3	Thu	5:18	6:36	12:05	3:13	5:34	6:48
4	Fri	5:18	6:37	12:06	3:13	5:35	6:49
5	Sat	5:19	6:37	12:06	3:14	5:36	6:49
6	Sun	5:19	6:37	12:07	3:14	5:36	6:50
7	Mon	5:19	6:37	12:07	3:15	5:37	6:50
8	Tue	5:20	6:38	12:07	3:16	5:38	6:51
9	Wed	5:20	6:38	12:08	3:16	5:38	6:52
10	Thu	5:20	6:38	12:08	3:17	5:39	6:52
11	Fri	5:20	6:38	12:09	3:17	5:39	6:53
12	Sat	5:21	6:38	12:09	3:18	5:40	6:53
13	Sun	5:21	6:38	12:09	3:18	5:41	6:54
14	Mon	5:21	6:38	12:10	3:19	5:41	6:54
15	Tue	5:21	6:38	12:10	3:20	5:42	6:55
16	Wed	5:21	6:38	12:11	3:20	5:43	6:56
17	Thu	5:21	6:38	12:11	3:21	5:43	6:56
18	Fri	5:21	6:38	12:11	3:21	5:44	6:57
19	Sat	5:21	6:38	12:12	3:22	5:45	6:57
20	Sun	5:22	6:38	12:12	3:23	5:45	6:58
21	Mon	5:22	6:38	12:12	3:23	5:46	6:58
22	Tue	5:22	6:38	12:12	3:24	5:47	6:59
23	Wed	5:22	6:38	12:13	3:24	5:47	6:59
24	Thu	5:22	6:38	12:13	3:25	5:48	7:00
25	Fri	5:21	6:38	12:13	3:25	5:49	7:00
26	Sat	5:21	6:38	12:13	3:26	5:49	7:01
27	Sun	5:21	6:37	12:14	3:26	5:50	7:01
28	Mon	5:21	6:37	12:14	3:27	5:50	7:02
29	Tue	5:21	6:37	12:14	3:27	5:51	7:03
30	Wed	5:21	6:37	12:14	3:28	5:52	7:03
31	Thu	5:21	6:36	12:14	3:28	5:52	7:03

Prayer times provided by <https://www.salahtimes.com>