

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 611L(WBA)

~~(U)~~ Mr. bin 'Atash's Notice of Conflict  
Affecting Representation of Mr. bin 'Atash's  
Interests in Motions Series Related to the  
Investigation of 9/11 or the Treatment of Mr.  
bin 'Atash from His Capture to the Present

22 January 2019

1. ~~(U)~~ **Timeliness:** This Notice is timely filed.

2. ~~(U)~~ **Facts:**

- a. ~~(U)~~ A pretrial hearing is scheduled for 28 January to 1 February 2019. (AE 611(DO Sup)).
- b. ~~(U)~~ The Supplemental Docket Order details at least eight motions series related to Federal Bureau of Investigation ("FBI") involvement in the investigation and capital prosecution of Mr. bin 'Atash: (1) AE 350RRR(ORD) (Testimony of the Former CIA Interpreter Utilized by Some Defense Teams)<sup>1</sup>; (2) AE 538(WBA) (Defense Motion to Compel FBI Manual for Terrorism Interrogation); (3) AE 561(AAA) (Defense Motion to Compel Information Regarding Non-CIA Requests for Black Site Interrogation); (4) AE 574G(AAA) (Mr. al Baluchi's Motion to Rescind Protective Order #3 or, in the Alternative, Dismiss the Charges Against Him); (5) AE 599 (Classified Motion to Compel Discovery); (6) AE 600 (Classified Defense Motion to Compel Discovery); (7) AE 601(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; and (8) AE 614(GOV) (Government Motion to Compel Notice of Intent to Introduce Mental Health Evidence).

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<sup>1</sup> ~~(U)~~ Attach. B (Additional Details Regarding AE 350 Series).

c. ~~(U)~~ On 4 January 2019, Counsel for Mr. al Baluchi filed AE 611I(AAA), Proposed Order of March and requested that various motions series be added to the Supplemental Docket Order. Mr. al Baluchi proposes at least three additional motions series that are related to FBI involvement in this case: (1) AE 432(AAA) (Motion to Compel Production of Policies and Procedures for the Collection and Preservation of Evidence from Detainees); (2) AE 557(KSM) (Defense Motion for Discovery Regarding Attack on the U.S.S. Cole); and (3) AE 575(GOV) (Classified Filing).

d. ~~(U)~~ On 20 December 2018, Defense Counsel for Mr. bin 'Atash learned of FBI investigation into Defense Counsel and Defense Team actions performed as part of Mr. bin 'Atash's representation. (AE 615(WBA) at 13-16).

e. ~~(U)~~ Defense Counsel for Mr. bin 'Atash possess no information pertaining to why and what the FBI is investigating related to their representation of Mr. bin 'Atash. Counsel filed AE 615(WBA) on 9 January 2019 and advised the Commission and the Special Review Team of the existence of the potential and/or actual conflict due to the investigation. The SRT Response filed on 17 January 2019 confirms the existence of the investigation and does not indicate that the investigation has been concluded. This Notice specifically incorporates herein the information detailed in Section 5 "Facts" of AE 615(WBA).

f. ~~(U)~~ Defense Counsel for Mr. bin 'Atash are afraid of pursuing Mr. bin 'Atash's interests in exposing FBI misfeasance and malfeasance its handling of the 9/11 investigation and its treatment of Mr. bin 'Atash from his capture until the present. Defense counsel reasonably believe that questioning FBI representations, work-product, investigative procedures, and interrogation policies and methods will subject them to further investigation and scrutiny by the FBI. Defense counsel reasonably believe that advocating for disclosure of information that the FBI has attempted

to hide from the public will subject them to further investigation and scrutiny by the FBI.

g. ~~(U)~~The motions series proposed for argument in the Supplemental Docket Order and the Proposed Order of March in AE 611I(AAA) relate, at least in part, to the misfeasance and malfeasance of the FBI in its handling of the 9/11 investigation and its treatment of Mr. bin 'Atash from his capture until the present. Additionally, many of the motions to compel information set for argument seek disclosure of information the FBI has thus far held from public view.

h. ~~(U)~~Because of their fear of further FBI scrutiny, Defense Counsel for Mr. bin 'Atash decline to question or argue in any way matters related to the following 11 motions set for argument and hearing in the 28 January to 1 February 2019 pre-trial hearings: AE 350RRR(ORD), AE 432(AAA), AE 538(WBA), AE 557(KSM), AE 561(AAA), AE 574G(AAA), AE 575(GOV), AE 599(WBA), AE 600(AAA), AE 601(AAA), and AE 614(GOV).

i. ~~(U)~~Until Defense Counsel for Mr. bin 'Atash are assured that they are no longer subject to law enforcement or security clearance investigation, Counsel will not represent Mr. bin 'Atash's interests in any pleading, argument, or witness examination related to FBI involvement in Mr. bin 'Atash's case.

j. ~~(U)~~As of the date of this Notice, Mr. bin 'Atash is represented by Ms. Cheryl T. Bormann (Learned Counsel), Mr. William J. Montross, Jr. (Detailed Defense Counsel), Mr. Edwin A. Perry (Detailed Defense Counsel), and Major Matthew H. Seeger (Military Counsel) as counsel of record. Counsel are also assisted by Capt Simon Caine, an uncleared military counsel, who was detailed to the defense team representing Mr. bin 'Atash in September 2018. Counsel intend to file a motion to excuse Capt Brian Brady as counsel of record in the coming days.

3. ~~(U)~~ Attachments:

A. ~~(U)~~ Certificate of Service. ~~(U)~~.

B. ~~(U)~~ Additional Details Regarding AE 350 Series. ~~(TS//OC/NF)~~

4. ~~(U)~~ Signatures:

/s/  
CHERYL T. BORMANN  
Learned Counsel

/s/  
EDWIN A. PERRY  
Detailed Defense Counsel

/s/  
MATTHEW H. SEEGER  
Major, USA  
Detailed Military Counsel

/s/  
WILLIAM R. MONTROSS, Jr.  
Detailed Defense Counsel

~~(U)~~ Attachment A

**CERTIFICATE OF SERVICE**

~~(U)~~ I certify that on 22 January 2019, I filed by email with the Trial Judiciary, AE 611L(WBA), Mr. bin 'Atash's Notice of Conflict Affecting Representation of Mr. bin 'Atash's Interests in Motions Series Related to the Investigation of 9/11 or the Treatment of Mr. bin 'Atash from His Capture to the Present, and served a copy of the attached motion on all counsel of record. The classified attachment was hand delivered to the Trial Judiciary and a copy was served on all counsel of record.

/s/  
CHERYL T. BORMANN  
Learned Counsel

~~(U)~~ Attachment B

**United States v. KSM et al.**

**APPELLATE EXHIBIT 611L (WBA)**

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*Classified*

**Defense Motion**

**APPELLATE EXHIBIT 611L (WBA), Attachment B, is located in the classified annex of the original record of trial.**

**POC: Chief, Office of Court Administration  
Office of Military Commissions**

United States v. KSM et al.

APPELLATE EXHIBIT 611L (WBA)