

**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 611Q (KSM)

Mr. Mohammad’s Notice of Declination

of Joinder to AE 611N (AAA)

25 January 2019

1. Timeliness:

This Notice of Declination is timely filed pursuant to RMC 3.5i(1).

2. Relief Requested:

Mr. Mohammad hereby gives notice that he declines to join AE611N.¹

3. Facts and Argument:

a. On 9 January 2019, Mr. bin ‘Atash filed AE 615.² This motion detailed that the Military Judge “must conduct a thorough inquiry into the potential conflict” and “cancel the proceedings until assurance can be had that Defense Counsel for Mr. bin ‘Atash are not burdened by conflict.”³

b. On 22 January 2019, the Military Judge entered an interim order mandating an *ex parte* meeting with Special Trial Counsel (SRT) regarding the allegations set forth in AE 615.⁴

¹ AE 611N (AAA), Mr. al Baluchi’s Response to AE 611 Amended Supplemental Docket Order (Updated Proposed Order of March)(23 January 2019).

² AE 615 (WBA), Defense Motion to Conduct Thorough Inquiry into Actual and/or Potential Attorney Conflict of Interest Pursuant to R.M.C. 901 and *Holloway v. Arkansas*, 435 U.S. 475 (1978) and to Cancel Proceedings Pending Inquiry. (9 January 2019).

³ AE 615 (WBA) at 2.

⁴ AE 615H INTERIM ORDER Defense Motion to Conduct Thorough Inquiry into Actual and/or Potential Attorney Conflict of Interest Pursuant to R.M.C. 901 and *Holloway v. Arkansas*, 435 U.S. 475 (1978) and to Cancel Proceedings Pending Inquiry (22 January 2019).

c. On 23 January 2019, Mr. Mohammad objected to the *ex parte* nature of the proceeding ordered in AE 615H.⁵

d. On 23 January 2019, Mr. al Baluchi filed AE 611N. This proposed order of march indicates that argument on the AE 615 series, currently encompassing multiple filings by the defense and the SRT, as well as interim orders, will take place, along with four other motion series, on the first day of hearings, followed by a full week of proceedings on other matters.

e. Until a thorough inquiry is completed and defense counsel are able to make an independent evaluation that they are no longer burdened by conflict, proceedings on all other matters must be cancelled.⁶ Therefore, Mr. Mohammad must decline joinder with Mr. al Baluchi's proposed order of march.

4. Oral Argument:

Mr. Mohammad does not request oral argument on this notice.

5. Request for Witnesses:

None.

6. Conference with Opposing Counsel:

No conference required. RC 3.5.i(3).

7. List of Attachments:

A. Certificate of Service

⁵ AE 615K (KSM) Mr. Mohammad's Notice of Objection to *ex parte* hearing required by AE 615H INTERIM ORDER (23 January 2019).

⁶ See AE 615I (KSM) Mr. Mohammad's Reply to Reply by Special Review Team to AE 615 (WBA), Defense Motion to Conduct Thorough Inquiry into Actual and/or Potential Attorney Conflict of Interest Pursuant to R.M.C. 901 and *Holloway v. Arkansas*, 435 U.S. 475 (1978) and to Cancel Proceedings Pending Inquiry (23 January 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 25th day of January 2019, I electronically filed AE 611Q (KSM), Mr. Mohammad's Notice of Declination of Joinder to AE 611N (AAA), 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