

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN ‘ATTASH, RAMZI BIN AL SHIBH, ALI ABDUL AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI</p>	<p>AE 615AA</p> <p>RULING</p> <p>Mr. Mohammad’s Motion to be Heard</p> <p>24 March 2019</p>
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1. Procedural History.

a. On 20 March 2019, after specifically finding that further oral argument was not necessary, this Commission issued a Consolidated Ruling¹ on the following Defense Motions:

- (1) Mr. Mohammad’s Motion to Reconsider AE 613E/615P Ruling;
- (2) Mr. Mohammad’s Motion to Compel Discovery from Special Trial Counsel; and
- (3) Mr. bin ‘Attash’s Renewed Defense Motion to Cancel Proceedings Pending

Conclusion of Full FBI Investigation.

b. On 22 March 2019, Mr. Mohammad filed a “Motion to be Heard” regarding the “ethical basis for his position that counsel have a potential conflict of interest that has not yet been resolved by the government nor the Military Judge.”² As a basis for the request to be heard, Mr. Mohammad cites to the transcript of a recent oral argument before the United States Supreme Court³ involving government misconduct in the context of a *Batson* issue.⁴

¹ AE 613G/615Y Consolidated Ruling, Mr. Mohammad’s Motion to Reconsider AE 613E/615P Ruling; Mr. Mohammad’s Motion to Compel Discovery from Special Trial Counsel; and Renewed Defense Motion to Cancel Proceedings Pending Conclusion of Full FBI Investigation, dated 20 March 2019 at 15-16.

² AE 615Z (KSM), Defense Mr. Mohammad’s Motion to be Heard, filed 22 March 2019.

³ Transcript of Oral argument, *Flowers v. Mississippi*, No 17-9572, United States Supreme Court, March 20, 2019.

⁴ See *Batson v. Kentucky*, 476 U.S. 79 (1986).

2. Law.

a. **Reconsideration.** Rule for Military Commissions (R.M.C.) 905(f) permits the Commission to reconsider any ruling (except the equivalent of a finding of not guilty) prior to authentication of the record of trial. Either party may move for reconsideration, but granting such a request is in the Military Judge's discretion. Generally, reconsideration should be based on a change in the facts or law, or instances where the ruling is inconsistent with case law not previously briefed. Reconsideration may also be appropriate to correct a clear error or prevent manifest injustice. *See United States v. Libby*, 429 F. Supp. 2d 46 (D.D.C. 2006); *United States v. McCallum*, 885 F. Supp. 2d 105 (D.D.C. 2012). Motions for reconsideration, however, are not appropriate to raise arguments that could have been, but were not raised previously, or arguments the Commission has previously rejected. *See United States v. Booker*, 613 F. Supp. 2d 32 (D.D.C. 2009); *United States v. Bloch*, 794 F. Supp. 2d 15, 19 (D.D.C. 2011).

b. **Oral Argument.** The opportunity to present oral argument regarding pretrial motions is afforded at the discretion of the Military Judge. *See* R.M.C. 905(h); Military Commission Rules of Court 3.5.m. and 3.9.a. (21 December 2017).

3. Analysis.

a. After reviewing Mr. Mohammad's Motion to be Heard, the Commission considers the motion to be a request for reconsideration of the Commission's decision in AE 613G/615Y Consolidated Ruling not to hear further oral argument prior to resolving the conflict issue.

b. After reviewing the stated basis for Mr. Mohammad's request for reconsideration, the Commission finds that the request does not meet the standard for reconsideration in that it does not state new facts or law, cite new controlling case law, or articulate how the Commission's

discretionary decision to not allow additional oral argument results in a clear error or a manifest injustice.

4. **Ruling.** Mr. Mohammad's Motion to be Heard in AE 615Z is **DENIED**.

So **ORDERED** this 24th day of March, 2019.

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K. A. PARRELLA
Colonel, U. S. Marine Corps
Military Judge