

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 615BB(WBA)

Defense Motion for Particularized
Information Regarding Investigation of
Defense Paralegal SSG Skeete.

Date Filed: 26 March 2019

1. **Timeliness**: This Motion is timely filed, pursuant to the 25 March 2019 direction of the Military Judge.

2. **Relief Sought**: Counsel for Mr. bin 'Atash request that the Military Judge inform Defense Counsel whether the wholly redacted police paperwork provided to Defense Counsel by the SRT involves or concerns the detention of SSG Brent Skeete at Joint Base Myer-Henderson Hall in Arlington, Virginia, in July 2018.

3. **Facts**:

a. SSG Brent Skeete, USA, was a paralegal who was detailed to the Defense Team representing Mr. bin 'Atash. (AE 615(WBA), Attach. 2, Declaration of SSG Brent Skeete, at 1). On 20 December 2018, Defense Counsel for Mr. bin 'Atash discovered that SSG Skeete was either involved in or the target of an investigation by the Federal Bureau of Investigation. Defense Counsel have been laboring under a cloud of suspicion and laboring under conflict since then.

b. In the face of these concerns, the Military Judge ordered the SRT to produce pleadings to Defense Counsel, with the expressed "hope that the documents that . . . are directed to be released will alleviate some of [Defense Counsels'] concerns." (Tr. at 22169).

c. In response, the SRT provided pleadings that were almost wholly redacted. Of note, the SRT provided one attachment of “police paperwork” containing 31 consecutive pages that were entirely blacked out. (AE 613(GOV), Attach. B at 1-31). The SRT revealed that the 31 blacked-out pages are “police paperwork that is related to the predication of the FBI’s national security investigation, and that has absolutely no connection to the activities of any Defense Team.” (AE 615V(GOV SRT) at 11 n.2).

d. Defense Counsel are aware of one incident involving SSG Skeete and military police. The incident occurred at Joint Base Myer-Henderson Hall in Virginia on 20 July 2018. Specifically, SSG Skeete was detained following the discovery of extensive weaponry and ammunition in his motor vehicle as he attempted to enter the base. Following his detention, he was questioned by law enforcement at the military base. At that time, Mr. William Montross, Managing Defense Counsel for Mr. bin ‘Atash’s Defense Team and the direct supervisor of SSG Skeete, was contacted by telephone by a Fort Myer investigator (believed to be with the Army Criminal Investigation Division) seeking information concerning SSG Skeete. Among other areas, Mr. Montross was questioned about SSG Skeete’s state of mind and purported intent.

e. Mr. Montross immediately informed Ms. Cheryl Bormann (Learned Counsel) and Mr. Edwin Perry (Detailed Defense Counsel) and updated them on the detention and investigation of SSG Skeete. After consultation among the three Defense Counsel, Mr. Montross and Mr. Perry drove to Joint Base Myer-Henderson Hall, met with civilian investigators and military police, and attempted to negotiate with them to secure the release of SSG Skeete. Mr. Montross and Mr. Perry also attempted to secure the seized personal property of SSG Skeete.

f. Following the release of SSG Skeete and his personal vehicle, SSG Skeete met with and discussed the incident with Ms. Bormann, Mr. Montross, and Mr. Perry that same night.

g. In the seemingly probable event that the full FBI investigation at issue in AE 615(WBA) involves the 20 July 2018 incident at Joint Base Myer-Henderson Hall, Ms. Bormann, Mr. Montross, and Mr. Perry are all witnesses. The three civilian Defense Counsel representing Mr. bin 'Atash are witnesses to SSG Skeete's state of mind prior to, during, and after the Fort Myer incident, as well as to his purported intent. Moreover, each of the attorneys are witnesses with direct evidence expected to be favorable to SSG Skeete.

h. To the extent that the 20 July 2018 Fort Myer detention and seizure is the incident giving rise to AE615(WBA), the Government has identified issues of criminal liability and issues warranting a [REDACTED] Defense Counsel surmise that the Government suspects that SSG Skeete, a converted Muslim, may have been "radicalized" and poses a threat similar to that posed by Nidal Hassan in the tragic shooting at Foot Hood, Texas. The Government may likewise suspect that "radicalization" was initiated or advanced by Mr. bin 'Atash. If the information surmised by the undersigned is correct, Defense Counsel are witnesses in an investigation and witnesses in any proceeding advanced against SSG Skeete. Disturbingly, Defense Counsel are now wholly placed between their client and their paralegal on any investigation of "radicalization." That is a conflict.

i. Defense Counsel have received no confirmation that the [REDACTED] involves the 20 July 2018 incident. On 25 March 2019, Defense Counsel inquired of the Military Judge if [REDACTED] involves the 20 July 2018 incident. The Military Judge instructed Defense Counsel to notice the Special Review Team and put the request in writing.

4. Argument:

Defense Counsel have repeatedly attempted to exercise their ethical and professional obligations to provide conflict-free representation to the client. See ABA Model Rule 1.7(a)(2); ABA Standards for Criminal Justice: Prosecution and Defense Function, (4th ed., 2015), Defense Function, Standard 4-1.7(b). The ability to provide that conflict-free representation, however, requires that Defense Counsel assess information necessary to resolve outstanding potential conflicts. At this point, that information has not been provided.

If the precipitating event for the present full FBI investigation concerning SSG Skeete is the 20 July 2018 incident at Joint Base Myer-Henderson Hall, Defense Counsel are actively conflicted. Defense Counsel are witnesses in the investigation. Defense Counsel are potential witnesses in a criminal prosecution of their former paralegal. They possess critical and important evidence that would be necessary to any defense. If the investigations involve any purported radicalization of SSG Skeete, Defense Counsel have another conflicting obligation: to protect and defend Mr. bin 'Atash against any such allegation that he advanced or supported such radicalization.

The Military Judge possesses the information necessary to answer the following: does the [REDACTED] involve the 20 July 2018 incident? Defense Counsel need this information to properly assess conflict. Notwithstanding the Military Judge's knowledge of SRT *ex parte* filings, the Military Judge possesses little or no information concerning the role of Defense Counsel in the 20 July 2018 event. Should the 20 July 2018 Fort Myer incident be the event that precipitated the full FBI investigation, Defense Counsel is prepared to present additional information, *ex parte*, to the Military Judge particularizing Counsel's role in the event and detailing the nature of the actual conflict.

5. **Conference with Opposing Counsel:** The Special Review Team opposes the relief requested.

6. **Attachments:**

A. Certificate of Service

B. Emails to Jocelyn Ballantine Regarding Request for Position

7. **Signatures:**

/s/

CHERYL T. BORMANN
Learned Counsel

/s/

EDWIN A. PERRY
Detailed Defense Counsel

/s/

WILLIAM R. MONTROSS, JR.
Detailed Defense Counsel

/s/

MATTHEW H. SEEGER
MAJ, USA
Detailed Military Counsel

Attachment A

CERTIFICATE OF SERVICE

I certify that on the 26th day of March 2019, I electronically filed, via e-mail, AE 615BB(WBA), Defense Motion for Particularized Information Regarding Investigation of Defense Paralegal SSG Skeete, with the Trial Judiciary and, served a copy on all defense counsel of record and the Special Review Team. Per paragraph 4.e of AE 615B(ORD), the Prosecution has been given notice of the aforementioned filing.

/s/

CHERYL T. BORMANN

Learned Counsel

Attachment B

UNCLASSIFIED//FOR PUBLIC RELEASE

From: [Ballantine, Jocelyn \(USADC\)](#)
To: [Bormann, Cheryl T CIV \(USA\)](#)
Cc: [OSD NCR OMC List MCDO Team Mohammad](#); [OSD NCR OMC List MCDO Team Bin Attash](#); [OSD NCR OMC List MCDO Team Hawsawi](#); [OSD NCR OMC List MCDO Team Al Baluchi](#); [OSD NCR OMC List MCDO Team RBAS](#); [Driscoll, Kevin \(CRM\)](#); [Shanker, Vijay \(CRM\)](#); [Boutros Gesch, Heidi \(CRM\)](#); [Campoamor-Sanchez, Fernando \(USADC\)](#)
Subject: [Non-DoD Source] RE: Request for Position
Date: Tuesday, March 26, 2019 11:53:16 AM

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Ms. Bormann,

My understanding of the proceedings before the Military Judge was that he declined to answer your question on this matter, and that he directed you instead to make this inquiry of the SRT. FBI national security investigations are classified, and the SRT cannot confirm the nature or subject(s) of such investigations. The SRT has shared the predication for the FBI's investigation with the Military Judge, and he has already ruled, several times, that no conflict of interest exists.

Jocelyn

From: Bormann, Cheryl T CIV (USA) [REDACTED]
Sent: Monday, March 25, 2019 5:54 PM
To: Ballantine, Jocelyn (USADC) [REDACTED]
Cc: OSD NCR OMC List MCDO Team Mohammad [REDACTED]
[REDACTED] OSD NCR OMC List MCDO Team Bin Attash [REDACTED]
[REDACTED] OSD NCR OMC List MCDO Team Hawsawi [REDACTED]
[REDACTED] OSD NCR OMC List MCDO Team Al Baluchi [REDACTED]
[REDACTED] OSD NCR OMC List MCDO Team RBAS [REDACTED]
[REDACTED] Driscoll, Kevin (CRM) [REDACTED] Shanker, Vijay (CRM)
[REDACTED] Boutros Gesch, Heidi (CRM) [REDACTED] Campoamor-Sanchez, Fernando (USADC) [REDACTED]
Subject: RE: Request for Position

Ms. Ballantine,

We are asking the military judge to answer the following question:
Is the investigation of SSG Skeete related to a 20 July 2018 incident where he was detained at Joint Base Myer – Henderson Hall?

Cheryl Bormann
Counsel for Walid bin 'Atash

From: Ballantine, Jocelyn (USADC) [REDACTED]
[REDACTED]
Sent: Monday, March 25, 2019 4:46 PM
To: Bormann, Cheryl T CIV (USA) [REDACTED]
[REDACTED]
Cc: OSD NCR OMC List MCDO Team Mohammad [REDACTED]
[REDACTED]
OSD NCR OMC List MCDO Team Bin Attash [REDACTED]
[REDACTED] OSD NCR
OMC List MCDO Team Hawsawi [REDACTED]
[REDACTED] OSD NCR OMC List MCDO Team Al
Baluchi [REDACTED]
[REDACTED] OSD NCR OMC List MCDO Team RBAS [REDACTED]
[REDACTED] Driscoll, Kevin
(CRM) [REDACTED] Shanker, Vijay
(CRM) [REDACTED] Boutros Gesch,
Heidi (CRM) [REDACTED] Campoamor-
Sanchez, Fernando (USADC) [REDACTED]
[REDACTED]
Subject: [Non-DoD Source] RE: Request for Position

Dear Ms. Bormann,

We are unable to state a position based on the information you have provided below. Can you please provide more detail about your motion? Additionally, please note that FBI national security investigations are classified, and the SRT cannot confirm the nature or subject(s) of such investigations.

V/r,
Jocelyn Ballantine

From: Bormann, Cheryl T CIV (USA) [REDACTED]
[REDACTED]
Sent: Monday, March 25, 2019 1:26 PM
To: Ballantine, Jocelyn (USADC) [REDACTED]
[REDACTED]
Cc: OSD NCR OMC List MCDO Team Mohammad [REDACTED]
[REDACTED]
OSD NCR OMC List MCDO Team Bin Attash [REDACTED]
[REDACTED] OSD NCR
OMC List MCDO Team Hawsawi [REDACTED]
[REDACTED] OSD NCR OMC List MCDO Team Al

Baluchi [REDACTED]
[REDACTED] OSD NCR OMC List MCDO Team RBAS [REDACTED]
[REDACTED] Driscoll, Kevin
(CRM) [REDACTED] Shanker, Vijay
(CRM) [REDACTED] Boutros Gesch,
Heidi (CRM) [REDACTED] Campoamor-
Sanchez, Fernando (USADC) [REDACTED]
[REDACTED]

Subject: Request for Position

Ms. Ballantine,
At the direction of the Military Judge, we are filing a Motion for Information Related to the Investigation of SSG Skeete. May we state your position?

Cheryl Bormann
Counsel for Walid bin 'Atash