

UNCLASSIFIED//FOR PUBLIC RELEASE
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 615CC (GOV SRT)

**Response by Special Review Team to
Defense Motion for Particularized
Information Regarding Investigation of
Defense Paralegal SSG Skete.**

5 April 2019

1. Timeliness

This response by the Special Review Team ("SRT") to AE 615BB (WBA) motion for particularized information regarding "the investigation of Defense Paralegal SSG Skete" is timely filed.

2. Relief Sought

The SRT respectfully requests that the Military Judge decline to provide Mr. bin 'Attash's Defense Counsel with the information they seek because to do so would potentially jeopardize an [REDACTED] investigation.

3. Burden of Proof

The Defense, as the moving party, must demonstrate by a preponderance of the evidence that the relief sought in AE 615BB is warranted. R.M.C. 905(c)(1)-(2).

4. Facts

[REDACTED]

[REDACTED]

On 26 March 2019, Mr. bin ‘Attash filed a motion asking the “Military Judge to inform defense counsel whether [REDACTED] provided to Defense Counsel by the SRT involves or concerns the detention of SSG Brent Skete at Joint Base Myer-Henderson Hall in Arlington, Virginia, in July 2018.” Motion at 1.¹

The [REDACTED] investigation was opened a full five months after the incident described by Mr. bin ‘Attash in his motion. The FBI was not involved in the arrest of SSG Skete in July 2018; nor was it involved in any determination regarding the resolution of that matter.

The SRT opposes providing any additional specific information to Mr. bin ‘Attash and his Defense Team because to do so might jeopardize an [REDACTED] investigation. This investigation remains pending, and no conclusion has been reached as to whether charges will be brought against the unidentified subject(s) of the investigation.

Moreover, the Commission has conducted a thorough inquiry into the FBI’s investigation. The SRT has filed multiple documents, *in camera* and *ex parte*, with the Commission, in compliance with AE 292QQ, in order to provide the Commission with the details [REDACTED]

[REDACTED] On 17 January 2019, the SRT provided a sworn declaration from the FBI, avowing that a diligent search of the FBI’s Central Records Systems had been completed and that “there is no indication that any current Counsel of record or current known Defense team member is the subject of any open national security or criminal FBI investigation.” AE 615D, Attachment B, FBI Declaration at 2-3. On 24 January 2019, the SRT provided the Commission with a

[REDACTED]

declaration from the Director of Security, Washington Headquarters Services, Department of Defense (the “WHS Declaration”), establishing that no current Defense Team member is under any type of security clearance investigation save a routine re-investigation for renewal of clearances. And on 7 February 2019, the SRT filed an *ex parte*, *under seal* Notice with the Commission that attached an unredacted Declaration by the Deputy Director of the Army Counterintelligence Coordinating Authority (the “ACICA Declaration”) concerning the Army 902d Military Intelligence Group’s involvement in the ongoing investigation. AE 613F (GOV SRT).

Additionally, on 24 January 2019, by order of the Commission, the SRT provided an *ex parte* presentation to the Military Judge regarding the facts and circumstances surrounding the FBI investigation. This presentation included a thorough question and answer session to clarify and expand upon the points made in the initial Government notices and declarations, and the SRT provided a full description of the additional investigative steps contemplated by the FBI.

These presentations and filings have provided the Commission with sufficient information to conclude, repeatedly (*see* AE 615P, AE 615Y, and AE 615AA), that no member of the five defense teams is currently operating under a conflict of interest that would prohibit them from ethically representing their clients.² The SRT therefore respectfully requests that the Commission decline to provide additional information to Mr. bin ‘Attash regarding the [REDACTED] investigation.

² Defense Counsel hypothesize that the FBI’s investigation involves the “radicalization of SSG Skete” and claim that their knowledge of the July 2018 incident involving SSG Skete makes them potential defense witnesses. Motion at 4. Defense Counsel further claim that this would also give rise to a competing conflict to defend Mr. bin ‘Attash against allegations that he “advanced or supported radicalization.” *Id.* Even if correct, this potential conflict is a future conflict, not a current conflict, and would not impact Defense Counsel’s current ability to ethically represent Mr. bin ‘Attash.

6. Oral Argument

The Special Review Team does not request oral argument.

7. Attachments

A. Certificate of Service, dated 5 April 2019.

Respectfully submitted,

//s//

Jocelyn Ballantine
Fernando Campoamor-Sánchez
Kevin Driscoll
Vijay Shanker
Heidi Boutros Gesch

Special Review Team

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on the 5th day of April 2019, I filed AE 615CC (GOV SRT), the Response by the SRT to AE 615BB (WBA), and I served a copy on Defense Counsel of record by electronic mail.

//s//

Jocelyn Ballantine
Special Trial Counsel
Office of Military Commissions