

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 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 <i>Holloway v. Arkansas</i> , 435 U.S. 475 (1978) and to Cancel Proceedings Pending Inquiry. 22 January 2019
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1. Procedural Background.

a. Defense Counsel for Mr. bin ‘Attash filed AE 615 (WBA)¹ requesting the Commission conduct a thorough inquiry into the potential conflict they claim results from an investigation being conducted by the Federal Bureau of Investigation (FBI) involving at least a former paralegal. Counsel for Mr. bin ‘Attash asserted “Mr. bin ‘Attash’s Defense Team is under investigation by the Federal Bureau of Investigation.”² Thereafter, Counsel for Mr. Mohammad filed AE 615A (KSM) requesting all briefing schedules be suspended pending the resolution of AE 615 (WBA). Counsel for Mr. bin ‘Attash filed three (3) Notice[s] of Conflict Affecting Representation of Mr. bin ‘Attash’s Interests in Filing Pleadings as to the AE 614, AE 616 and AE 530 series.³ Counsel for Mr. Mohammad also filed notices of declination to file pleadings in AE 555, AE 614, and AE 616 because of the alleged “presumptive” conflict of interest involving all of the Defense Teams.⁴

¹ 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, filed 9 January 2019.

² *Id.* at 3.

³ See AE 615C (WBA), Mr. bin ‘Atash’s Notice of Conflict Affecting Representation of Mr. bin ‘Atash’s Interests in Filing Pleadings in the AE 614 Motions Series, filed 17 January 2019; AE 615E (WBA), Mr. bin ‘Atash’s Notice of Conflict Affecting Representation of Mr. bin ‘Atash’s Interests in Filing Pleadings in the AE 616 Series, filed 17 January 2019; and, AE 615F, Mr. bin ‘Atash’s Notice of Conflict Affecting Representation of Mr. bin ‘Atash’s Interests Pursuant to AE 530 (GOV), filed 17 January 2019.

⁴ AE 555FFF (KSM), Mr. Mohammad’s Notice Regarding Non-Filing of Reply to AE 555DDD, filed 11 January 2019; AE 614D (KSM), Mr. Mohammad’s Notice Regarding Non-Filing of Reply to AE 614 (GOV), filed 14

b. In response to the Commission's order for an expedited briefing schedule,⁵ the Government Special Trial Counsel (STC) filed AE 615D (GOV SRT)⁶ asserting there was no conflict of interest burdening any of the five (5) defense teams as there is no investigation of any "counsel of record" or "known current member" of the bin 'Attash defense team pending. This assertion was supported by a declaration of a FBI Supervisory Special Agent stating that, after searching the FBI's official system of records, he was aware of no information that any counsel of record or member any of the five defense teams is currently under FBI investigation.⁷

2. **Analysis.** The Commission appreciates the information the STC provided via the FBI Supervisory Special Agent's declaration. However, the Commission recognizes the Defense teams have not yet filed any replies to the STC pleading and declaration and the next session of Commission hearings is scheduled to begin on 28 January 2019 at U.S. Naval Station, Guantanamo Bay, Cuba. In order to conduct the thorough inquiry into the potential conflict requested by Mr. bin 'Attash's counsel, the Commission finds it necessary to require the STC to provide the Commission an *ex parte* presentation to further illuminate the facts and circumstances of the FBI investigation.

3. **ORDER.** At least one member of the STC will appear and provide the Commission a robust presentation on the facts and circumstances surrounding the FBI investigation and what additional investigative steps, if any, are contemplated. The presentation will be *ex parte* in nature. The transcript and any exhibits received by the Commission as part of the *ex parte* presentation will be maintained under seal. The presentation will be conducted in the secure space controlled by the

January 2019; and, AE 616B (KSM), Mr. Mohammad's Notice Regarding Non-Filing of Response to AE 350SS/AE 616, filed 16 January 2019.

⁵ See AE 615B, ORDER, Expedited Briefing Schedule and Deferral of Ruling on Motion to Suspend Briefing Deadlines, dated 11 January 2019.

⁶ AE 615D (GOV SRT), 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, filed 17 January 2019.

⁷ See AE 615D (GOV SRT), Attach. B.

Office of Court Administration, Office of Military Commissions starting at **1300 on 24 January**

2019.

So **ORDERED** this 22nd day of January, 2019.

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