

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

<b>UNITED STATES OF AMERICA</b>  v.  <b>KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN ‘ATTASH, RAMZI BIN AL SHIBH, ALI ABDUL AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI</b>	<b>AE 616P</b>  <b>RULING</b>  <b>Mr. al Baluchi’s Motion to Continue Testimony by the Interpreter Currently Scheduled for a Closed Session During the March 2019 Hearings</b>  <b>21 March 2019</b>
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**1. Procedural Background.**

a. In AE 350RRR,<sup>1</sup> this Commission ordered the Government to produce the person referred to in this AE series as “the Interpreter” to testify as a witness via video teleconference in a closed session pursuant to Rule for Military Commissions (R.M.C.) 806(b)(2). The Defense, in AE 616A (AAA), objected to the closed testimony of the Interpreter and requested the Interpreter testify in an open session.<sup>2</sup> In AE 616D (GOV), the Government responded with a classified filing invoking the National Security Privilege pursuant to Military Commission Rule of Evidence (M.C.R.E.) 505(h), asserting that it is necessary to take the Interpreter’s testimony entirely in closed session to protect information the disclosure of which could reasonably be expected to cause damage to the national security, including intelligence or law enforcement sources, methods, or activities and to protect the physical security of the Interpreter and his or her family.<sup>3</sup> Counsel for the Accused and the Government argued the matter before the Commission in open and closed session on 29 January 2019. Due to a medical emergency of the military judge, this hearing was truncated and the issue of the Interpreter’s testimony was rendered temporarily moot.

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<sup>1</sup> AE 350RRR Order, Defense Motions in the AE 350 Series, dated 13 December 2018.

<sup>2</sup> AE 616 (AAA), Mr. al Baluchi’s Objection to Closure of Interpreter’s Testimony, filed 16 January 2019.

<sup>3</sup> AE 616D (GOV), Government Unclassified Notice of Classified Filing, filed 22 January 2019; *see also* AE 616F (GOV), Government Notice of Filing of Exhibits Relevant to AE 350 Motion Series, filed 24 January 2019.

b. On 1 March 2019, the Commission issued AE 616J,<sup>4</sup> ordering the Government to produce the Interpreter to testify during Commission hearings scheduled for 25-29 March 2019. The ruling also denied Mr. Ali's motion to take the Interpreter's testimony in open session and, to narrowly tailor the closure, required the Government (not later than 10 days after the Interpreter testifies) to conduct appropriate classification reviews of the transcript, produce a redacted, unclassified, unofficial/unauthenticated transcript, and provide it to the public in a manner similar to unofficial/unauthenticated transcripts of open sessions.

c. On 15 March 2019, Mr. Ali (a.k.a. Mr. al Baluchi) moved the Commission to continue the taking of testimony by the Interpreter in closed session during the March 2019 hearings until the U.S. Court of Military Commissions Review (U.S.C.M.C.R.) considers a writ of mandamus filed by Mr. Ali requesting that Court to order this Commission to receive unclassified testimony of the Interpreter in open court.<sup>5</sup> The Government responded, opposing the continuance and incorporating its prior classified filing in AE 616D (GOV), which explained why the Interpreter's testimony should be taken in closed session and why lesser alternatives to closure were insufficient to protect the Government interests asserted.<sup>6</sup>

## 2. Analysis.

a. The events that caused the Defense to seek testimony from the Interpreter occurred on 9 February 2015. The extensive litigation arising out of these events began on 10 February 2015 in the AE 350 series<sup>7</sup> culminating on 13 December 2018 with AE 350RRR granting the Defense motion

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<sup>4</sup> AE 616J, Ruling, Pursuant to Rule for Military Commissions 806(b)(2), dated 1 March 2019.

<sup>5</sup> AE 616K (AAA), Mr. al Baluchi's Motion to Continue Testimony by the Interpreter Currently Scheduled for a Closed Session During the March 2019 Hearings, filed 15 March 2019.

<sup>6</sup> AE 616M (GOV), Government Response to Mr. Ali's Motion to Continue Testimony by the Interpreter Currently Scheduled for a Closed Session During the March 2019 Hearings, filed 19 March 2019.

<sup>7</sup> See AE 350 (GOV), Amended Government Unclassified Notice of Classified Filing, filed 10 February 2015, *et seq.*

to produce the Interpreter to testify, and defining the scope of his or her testimony.<sup>8</sup> Subsequent issues regarding whether the Interpreter would testify in open or closed session (or both) were litigated in the AE 616 series.

b. In AE 616J, the Commission affirmed its earlier decision to receive the Interpreter's testimony in a closed session and its finding that lesser alternatives to closure would be insufficient to protect national security information and to protect the safety of the Interpreter and his or her family. In issuing this ruling, the Commission considered both the filings by the parties – with particular focus on the Government's explanation in AE 616D (GOV) - as well as oral argument on 29 January 2019.<sup>9</sup> There is nothing else pending before the Commission regarding this issue.

c. It has been over four (4) years since the events giving rise to the Defense motion for the Government to produce the Interpreter to testify.<sup>10</sup> The Commission has issued its ruling regarding closure issues. As noted by the Government during argument, significant logistics, involving multiple government agencies, are required to safely prepare for the Interpreter's testimony. The Commission does not find further delay to be in the interest of justice.

3. **Ruling.** The motion to continue is **DENIED**.

So **ORDERED** this 21st day of March, 2019.

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

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<sup>8</sup> Motions in the AE 350 series were on multiple dockets between 2015 and 2018, however the parties advised the Commission these motions were not ripe because of outstanding discovery to be provided by the Government to the Defense either directly or through the summary/substitution process in Military Commission Rule of Evidence 505.

<sup>9</sup> The Commission also addressed whether the Interpreter's testimony should be in open or closed session during prior oral argument on 14 November 2018. *See* Unofficial/Unauthenticated Transcript of the *U.S. v. Khalid Shaikh Mohammad, et al.*, Motion Hearings dated 14 November 2018 from at 1:06 P.M. to 2:14 P.M., at 21518-21521.

<sup>10</sup> Of note, the AE 350 series began primarily as a motion to depose the Interpreter as opposed to taking his testimony in open court.