

**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 BINALSHIBH; ALI ABDUL AZIZ ALI; MUSTAFA AHMED ADAM AL HAWSAWI</p>	<p>AE 619N (GOV)</p> <p>(U) Government Response To Defense Motion to Waive Mr. Hawsawi’s Appearance at the Military Commission Session Scheduled to Begin on 25 March 2019</p> <p>19 March 2019</p>
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1. (U) Timeliness

(U) The Prosecution timely files this Response pursuant to AE 619F, Expedited Briefing Order.

2. (U) Relief Sought

(U) The Prosecution respectfully requests that this Commission deny the requested relief set forth in AE 619D (MAH), Defense Motion to Waive Mr. Hawsawi’s Appearance at the Military Commission Session Scheduled to Begin on 25 March 2019.

3. (U) Burden of Proof

(U) As the moving party, the Defense must demonstrate by a preponderance of the evidence that the requested relief is warranted. *See* R.M.C. 905(c)(1)–(2).

4. (U) Facts

(U) The Prosecution incorporates by reference the facts as stated in AE 362R (GOV), Government Response to Defense Motion for Appropriate Relief to Continue December 2016 Hearings.

(U) On 5 December 2016, the previous Senior Medical Officer testified regarding the underlying issues set forth in AE 362P (MAH), Defense Motion for Appropriate Relief to Continue December 2016 Hearings. *See* Unofficial/Unauthenticated Transcript 14075–128.

(S) On 12 March 2019, Defense counsel for Mr. Hawsawi filed the instant motion and requested that he “be excused from attending the military commission presently scheduled to commence on 25 March 2019.” AE 619D (MAH) at 1. In doing so, the Defense cites recent medical diagnoses as its justification for this Commission to divert from the status quo as established in AE 037H, Order.

(S) On 14 March 2019, the Commission issued AE 619F, Expedited Briefing Order, and ordered “[t]he Government response [to AE 619D (MAH)] is due to the Commission no later than (NLT) 19 March 2019” AE 619F at 1.

5. (S) Law and Argument

(U//FOUO) The Defense motion should be denied and the Military Judge should continue to require Mr. Hawsawi to “participate in an on-the-record inquiry [on the first day of each hearing] to ensure he understands his individual rights,” before he is permitted to voluntarily absent himself from any future session of the Commission. AE 037H at 4. Within the motion, Defense counsel for Mr. Hawsawi request that he be “excused from attending the military commission presently scheduled to commence on 25 March 2019,”¹ based on the fact that he has been recently diagnosed with anal stenosis and that he continues to “regularly suffer[] from debilitating migraines and persistent ringing in his ears.” AE 619 (MAH) at 4. However, based on an affidavit provided by the Senior Medical Officer, JTF-GTMO is aware of the issues cited by the Defense and is providing Mr. Hawsawi with appropriate medical treatment for his healthcare issues. *See* Attach. B. Further, the Senior Medical Officer states that “as long as the detainee has restroom breaks and be allowed to stand as needed, there would be no medical reason why he cannot attend and be present at commission hearings.” *Id.* at 2. Given this medical opinion, the Commission should deny the Defense motion and advise Mr. Hawsawi in-person of his right to be present while on-the-record on Monday, 25 March 2019.

¹ (S) AE 619D (MAH) at 1.

6. ~~(S)~~ **Conclusion**

~~(S)~~ For the reasons stated above, and contained within the attached declaration, the Prosecution respectfully requests that this Commission deny the requested relief set forth in AE 619D (MAH), Defense Motion to Waive Mr. Hawsawi's Appearance at the Military Commission Scheduled to Begin on 25 March 2019, without oral argument.

7. ~~(S)~~ **Oral Argument**

~~(S)~~ The Prosecution does not request oral argument. Further, the Prosecution strongly posits that this Commission should dispense with oral argument as the facts and legal contentions are adequately presented in the material now before the Commission and argument would not add to the decisional process. However, if the Commission decides to grant oral argument to the Defense, the Prosecution requests an opportunity to respond.

8. ~~(S)~~ **Witnesses and Evidence**

~~(S)~~ The Prosecution will not rely on any witnesses or additional evidence in support of this motion.

9. ~~(S)~~ **Additional Information**

~~(S)~~ The Prosecution has no additional information.

(U) ATTACHMENT A

(U) ATTACHMENT B

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~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~~~(S//FOUO)~~ DECLARATION OF SENIOR MEDICAL OFFICER, CAMP VII

~~(S)~~ Pursuant to 28 U.S.C. § 1746, I, the Senior Medical Officer (SMO)¹ hereby declare:

1. ~~(S//FOUO)~~ I currently serve as the Senior Medical Officer, Joint Medical Group (JMG), Joint Task Force Guantanamo Bay (JTF-GTMO), Cuba, with responsibility for the medical care provided to detainees referred to as "high-value" or "TS/SCI" detainees. I supervise the operation of the JMG that provides medical care to those detainees. I have served in this position since 04 January 2019. I have personal knowledge of the procedures that are in place for the operation and application of medical care at JTF-GTMO medical facilities.
2. ~~(S//FOUO)~~ I am responsible for the medical care for detainee MUSTAFA AHMED ADAM AL HAWSAWI, ISN 10011. On 30 November 2018, the detainee was evaluated by a gastroenterologist and had a colonoscopy that revealed mild anal stenosis that did not require an intervention. Part of the recommendation was a trial of Linzess. Linzess is an FDA-approved medication indicated for chronic constipation. Part of the side effect of this medication may include fatigue. We were able to procure and start this medication at a dose of 290mcg on 1 March 2019 every other day as indicated for chronic constipation. I spoke with him on 12 March and the detainee reported that he no longer strains as much as he does compared to previous, which also minimized his pain. He did not disclose any concern for fatigue related to this medication. In regards to his chronic pain, he uses Tramadol mostly at night as needed. Tramadol is an opioid that may cause mild sedation, however, he has been using this medication for more than two years, which would lessen this effect. He never disclosed any side effects related to this medication. I offered other classes of non-opioid medications indicated for chronic pain, however, he refused these and insisted on continuing the Tramadol.
3. ~~(S//FOUO)~~ Beginning 4 December 2018, the detainee's blood pressure (BP) was found to be slightly above 140/90 (144/97), and the SMO at the time recommended to add another antihypertensive agent, specifically, Lotrel 5/20mg. Since then, his BPs continued to be greater than 140/90 (goal is less than 140/90 based on current standard of care) and most recently, is now on three agents of maximum dosage anti-hypertensives: Lotrel 10/40mg (combination of amlodipine and benazepril) and Hydrochlorothiazide 25mg. Previously, his BP was controlled with only one agent (Norvasc 10mg daily). On 12 March 2019, I met detainee with a plan to workup for secondary causes of hypertension.
4. ~~(S//FOUO)~~ In regards to his migraines, they are currently controlled with Magnesium Oxide as a prophylactic medication. Since I took over SMO, headaches was not one of his main complaint. I even offered if he would like to see the neurologist in April, but he refused.

~~(S)~~¹ My name is not being used in this declaration in order to protect my identity. Given the sensitivity of the position in which I serve and potential threats to the safety of myself and my family that may result from my service in that position, either presently or in other positions in which I may serve in the future, it is the policy of JTF-GTMO that my name not be used or disclosed in litigation-related or other public filings.


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5. ~~(U//FOUO)~~ Upon review of the detainee's medical record in conjunction with my interaction with him, my opinion is as long as the detainee has restroom breaks and be allowed to stand as needed, there would be no medical reason why he cannot attend and be present at commission hearings. At this time, there are no special accommodations or changes required to the standard operation in transporting detainee.

6. ~~(S)~~ I declare under penalty of perjury under the laws of the United States of America that the foregoing is true, accurate and correct to the best of my knowledge.

~~(S)~~ Dated: 18 March 2019

~~(U//FOUO)~~ 
Senior Medical Officer
Camp VII

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