

**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

AE619P (AAA)

**Mr. al Baluchi's Reply to
Government Response**
(Updated Proposed Order of March)

21 March 2019

1. **Timeliness:** This updated proposed order of march is timely filed.
2. **Overview:** Mr. al Baluchi respectfully proposes the following order of march for hearings conducted pursuant to RMC 803(a) in March 2019. Italicized numbers denote motions not currently listed on AE619B Docket Order.

Open session 1

Protective orders: AE118, AE574G, AE599, AE600, AE601

Personal jurisdiction: *AE502CCCC*

Attorney-client confidentiality: AE133RR

Record: *AE555GGG*

Mental health evidence: AE614

Hostilities discovery: AE617, *AE620*

505(h)

Protective orders: *AE524RR (AAA Sup)/AE524HHH*

Open session 2

Protective orders: *AE524HHH, AE524RR (AAA Sup), AE524TT (RBS Sup)*

Closed 806 session

Protective orders: AE118, AE574G, AE599, AE600, AE601

Attorney-client confidentiality: AE133RR

Testimony (Thursday)¹

Former CIA Interpreter: AE350RRR/AE616J

3. Argument:

The military commission has ordered the following issues for argument or evidence at the March 2019 hearing:²

AE118 (WBA, AAA) Motion to Abate Proceedings Pending Compliance with Protective Order #1;³

¹ In AE619K (GOV) Government Response to Mr. al Baluchi's Response to Docket Order (Proposed Order of March), the government states that it intends to make the Interpreter available to testify on Thursday, 28 March 2019. Mr. al Baluchi objects to closure of the unclassified portion of the testimony. AE616A (AAA) Mr. al Baluchi's Objection to Closure of Interpreter's Testimony; *see also* AE616J Ruling (overruling Mr. al Baluchi's objection). The military commission has ordered expedited briefing on AE616K (AAA) Mr. al Baluchi's Motion to Continue Testimony by the Interpreter Currently Scheduled for a Closed Session During the March 2019 Hearings. *See* AE616L Expedited Briefing Schedule. Separately, Mr. al Baluchi has moved the Court of Military Commission Review for a stay of the Interpreter's testimony pending resolution of his petition for mandamus challenging the closure order, and informed the CMCR of the military commission's expedited briefing schedule.

² AE619B Docket Order. The government has withdrawn AE575 (GOV) Government Discovery Status Update and Motion. *See* AE575K Order. The military commission has ruled on the pending motions in the AE595 and AE615 series in advance of the hearing. *See* AE595EE Ruling; AE613G/AE615Y Consolidated Ruling. The scheduling of the Interpreter's testimony is still under review with this military commission and the Court of Military Commission Review as of this filing. *See, e.g.,* AE616L Order.

³ At a 505(h) hearing on 8 December 2016, Mr. al Baluchi withdrew some aspects of AE118. AE412D Official/Unauthenticated Transcript of 8 December 2016 at 4-9; *see also* AE118G (AAA Sup) Mr. al Baluchi's Motion to Partially Withdraw AE118G 505(g) Notice. The parties previously argued AE118 on 20, 21, and 23 March 2017. Unofficial/Unauthenticated Transcript of 20 March 2017 at 14787-816; Unofficial/Unauthenticated Transcript of 21 March 2017 at 14820-25; Official/Unauthenticated Transcript of 23 March 2017 at 14990-91. The military

AE133RR (AAA) Mr. al Baluchi's Motion to Permanently and Verifiably Disable Audio Monitoring Capability in Attorney-Client Meeting Rooms;⁴

AE350RRR/AE616J Testimony of the Former CIA Interpreter Utilized by Some Defense Teams;⁵

AE574G (AAA) Mr. al Baluchi's Motion to Rescind Protective Order #3 or, in the Alternative, Dismiss the Charges Against Him;⁶

commission has previously authorized presentation of classified information in a closed hearing. AE118L Ruling; AE118I Order.

⁴ The parties previously argued AE133RR on 24 August 2017, 16 October 2017, 26 February 2018, and 25 July 2018. Unofficial/Unauthenticated Transcript of 24 August 2017 at 16277-83, 16290-98; Unofficial/Unauthenticated Transcript of 16 October 2017 at 16553-74; Unofficial/Unauthenticated Transcript of 26 February 2018 at 18902-05; Unofficial/Unauthenticated Transcript of 25 July 2018 at 20153-55. The military commission has previously approved the use of classified information in a closed hearing. AE133DDD Ruling; AE133VV Ruling.

⁵ AE350RRR Order. The issue originally arose on 9 February 2015. Unofficial Unauthenticated Transcript of 9 February 2015 at 8248-52. The parties argued the issue on 11 February 2015, 25 October 2015, 29 October 2015, 17 February 2016, 7 December 2016, 16 May 2017, 24 August 2017, 16 October 2017, 8 January 2018, 26 February 2018, 23 July 2018, 25 July 2018, 14 November 2018, and 16 November 2018. Unofficial/Unauthenticated Transcript of 11 February 2015 at 8265-84, 8336-44; Unofficial/Unauthenticated Transcript of 25 October 2015 at 8709-14; Unofficial/Unauthenticated Transcript of 29 October 2015 at 8978-9038; Unofficial/Unauthenticated Transcript of 17 February 2016 at 10305-06; Unofficial/Unauthenticated Transcript of 7 December 2016 at 14388-95; Unofficial/Unauthenticated Transcript of 16 May 2017 at 15861; Unofficial/Unauthenticated Transcript of 24 August 2017 at 16215; Unofficial/Unauthenticated Transcript of 16 October 2017 at 16645; 8 January 2018 at 18334-35; Unofficial/Unauthenticated Transcript of 26 February 2018 at 18900-01; Unofficial/Unauthenticated Transcript of 23 July 2018 at 20108; Unofficial/Unauthenticated Transcript of 25 July 2018 at 20117; Unofficial/Unauthenticated Transcript of 14 November 2018 at 21482-527; Unofficial/Unauthenticated Transcript of 16 November 2018 at 21885; Unofficial/Unauthenticated Transcript of 29 January 2019 at 22237-56. In AE350RRR and AE616J Ruling, the military commission has ordered a closed hearing pursuant to RMC 806.

⁶ The military commission has authorized the use of classified information in a closed session. AE574K Ruling.

AE599 (WBA) Classified Motion to Compel Discovery;⁷

AE600 (AAA) Mr. al Baluchi's Motion to Compel Discovery Requested in DR-280-AAA;⁸

AE601 (AAA) Mr. al Baluchi's Motion to Dismiss or, in the Alternative, to Suppress Evidence the Government Intends to Introduce in Violation of the Confrontation Clause;⁹

AE614 (GOV) Government Motion to Compel Notice of Intent to Introduce Expert Mental Health Evidence;

AE617 (AAA) Mr. al Baluchi's Motion to Compel Communications from the International Committee for the Red Cross Concerning the Existence of an Armed Conflict 1996-2002.

Mr. al Baluchi respectfully requests the military commission to add the following motions for argument:¹⁰

AE502CCCC (AAA) Mr. al Baluchi's Motion to Schedule Evidentiary Hearing Regarding Personal Jurisdiction;¹¹

⁷ The military commission has authorized the use of classified information in a closed session. AE599F Ruling.

⁸ The military commission has authorized the use of classified information in a closed session. AE600C Ruling.

⁹ The military commission has authorized the use of classified information in a closed session. AE601E Ruling.

¹⁰ Mr. al Baluchi concurs in the assessment that the military commission should defer argument on AE538 (WBA) Defense Motion to Compel FBI Manual for Terrorism Interrogation and AE561 (AAA) Defense Motion to Compel Information Regarding Non-CIA Requests for Black Site Interrogation. The government has not yet completed its production of voluntary discovery relevant to these motions.

¹¹ Although AE502CCCC is an independent motion, its predicates include AE488 (MAH) Defense Motion to Dismiss for Lack of Subject Matter Jurisdiction Due to the Absence of Hostilities and AE502 (MAH) Defense Motion to Dismiss for Lack of Personal Jurisdiction due to the Absence of Hostilities. The parties argued the procedural aspects of jurisdictional challenges on 24 March 2017 and 15 May 2017. Unofficial/Unauthenticated Transcript of 24 March 2017 at 15521-41;

AE524RR (AAA Sup) Mr. al Baluchi's Supplement to Mr. al Baluchi's Response to Motion to Reconsider and Clarify AE524LL Ruling;¹²

AE524TT (RBS Sup) Mr. bin al Shibh's Supplement to AE524TT (RBS) Mr. bin al Shibh's Response to AE524NN (GOV);

AE524HHH (AAA) Mr. al Baluchi's Motion to Compel Witnesses in Support of AE524RR (AAA Sup);¹³

AE555GGG (AAA) Mr. al Baluchi's Motion to Compel the Convening Authority to Produce a Complete Transcript of Mr. William Castle's Testimony on 13 November 2018.¹⁴

The government has stated that the following motion is ripe to be added to the docket:

Unofficial/Unauthenticated Transcript of 24 March 2017 at 15649-748. The parties argued additional aspects of AE502 on 21 August 2017, 19-20 October 2017, and 20 January 2018. Unofficial/Unauthenticated Transcript of 21 August 2017 at 16061-107; Unofficial/Unauthenticated Transcript of 19 October 2017 at 16908-7023; Official/Unauthenticated Transcript of 20 October 2017 at 16828-44; Unofficial/Unauthenticated Transcript of 10 January 2018 at 18434-94. Mr. al Hawsawi and the government presented evidence on 5-8 December 2017. Unofficial/Unauthenticated Transcript of 5 December 2017 at 17352-502; Unofficial/Unauthenticated Transcript of 6 December 2017 at 17533-744; Unofficial/Unauthenticated Transcript of 7 December 2017 at 17786-8035; Official/Unauthenticated Transcript of 7 December 2017 at 17662-75; Unofficial/Unauthenticated Transcript of 8 December 2017 at 18141-280; Official/Unauthenticated Transcript of 8 December 2017 at 17889-95. The government in AE619K did not state an objection to the request to add AE502CCCC to the docket.

¹² AE524RR (AAA Sup) requires a 505(h) hearing. *See* AE524III (AAA) Defense Notice Pursuant to MCRE 505(g)(1)(A). Mr. al Baluchi anticipates calling one witness in connection with this pleading. The government objects to oral argument on AE524RR (AAA Sup), AE524TT (RBS Sup), and AE524HHH. AE619K.

¹³ AE524HHH (AAA) requires a 505(h) hearing. *See* AE524III (AAA) Defense Notice Pursuant to MCRE 505(g)(1)(A).

¹⁴ The government in AE619K did not state an objection to the request to add AE555GGG to the docket.

AE620 (AAA) Mr. al Baluchi's Motion to Compel Documents and Information Concerning the United States' Pre-9/11 Law-of-War Detainees Associated with al Qaeda.¹⁵

4. Attachments:

A. Certificate of Service;

B. Prayer times.

Very respectfully,

//s//

JAMES G. CONNELL, III
Learned Counsel

//s//

STERLING R. THOMAS
Lt Col, USAF
Defense Counsel

//s//

ALKA PRADHAN
Defense Counsel

//s//

BENJAMIN R. FARLEY
Defense Counsel

//s//

MARK E. ANDREU
Capt, USAF
Defense Counsel

Counsel for Mr. al Baluchi

¹⁵ The government frames its position as an objection to a defense request to defer argument on AE620. AE619K at 2. The government misreads Mr. al Baluchi's position. The military commission determined not to add AE620 to its initial docket; Mr. al Baluchi merely concurred in this decision.

Attachment A

CERTIFICATE OF SERVICE

I certify that on the 21st day of March, 2019, I electronically filed the foregoing document with the Clerk of the Court and served the foregoing on all counsel of record by email.

//s//

JAMES G. CONNELL, III

Learned Counsel

Attachment B

Prayer times for Guantanamo Bay Naval Base (Cuba)

High Latitude Method:Angle Based Rule

Prayer Calculation Method:Muslim World League

Asar Calculation Method:Hanafi

01 March 2019 - 31 March 2019

Date	Day	Fajr	Sunrise	Zohar	Asar	Magrib	Isha
1	Fri	5:07	6:21	12:13	4:28	6:06	7:15
2	Sat	5:07	6:20	12:13	4:28	6:06	7:15
3	Sun	5:06	6:19	12:13	4:28	6:07	7:16
4	Mon	5:05	6:18	12:13	4:28	6:07	7:16
5	Tue	5:04	6:18	12:12	4:29	6:07	7:16
6	Wed	5:04	6:17	12:12	4:29	6:08	7:16
7	Thu	5:03	6:16	12:12	4:29	6:08	7:17
8	Fri	5:02	6:15	12:12	4:29	6:08	7:17
9	Sat	5:01	6:14	12:11	4:29	6:09	7:17
10	Sun	6:01	7:14	1:11	5:29	7:09	8:18
11	Mon	6:00	7:13	1:11	5:30	7:09	8:18
12	Tue	5:59	7:12	1:11	5:30	7:09	8:18
13	Wed	5:58	7:11	1:10	5:30	7:10	8:19
14	Thu	5:57	7:10	1:10	5:30	7:10	8:19
15	Fri	5:56	7:09	1:10	5:30	7:10	8:19
16	Sat	5:55	7:09	1:09	5:30	7:11	8:19
17	Sun	5:55	7:08	1:09	5:30	7:11	8:20
18	Mon	5:54	7:07	1:09	5:30	7:11	8:20
19	Tue	5:53	7:06	1:09	5:30	7:12	8:20
20	Wed	5:52	7:05	1:08	5:30	7:12	8:21
21	Thu	5:51	7:04	1:08	5:30	7:12	8:21
22	Fri	5:50	7:03	1:08	5:30	7:12	8:21
23	Sat	5:49	7:02	1:07	5:30	7:13	8:22
24	Sun	5:48	7:02	1:07	5:30	7:13	8:22
25	Mon	5:47	7:01	1:07	5:30	7:13	8:22
26	Tue	5:46	7:00	1:06	5:30	7:13	8:23
27	Wed	5:46	6:59	1:06	5:30	7:14	8:23
28	Thu	5:45	6:58	1:06	5:30	7:14	8:23
29	Fri	5:44	6:57	1:06	5:30	7:14	8:24
30	Sat	5:43	6:56	1:05	5:30	7:14	8:24
31	Sun	5:42	6:56	1:05	5:30	7:15	8:24