

**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 623A

ORDER

**Government Notice
to the Commission**

10 April 2019

1. The Defense moved¹ the Commission to issue a proposed order² clarifying the intent of the parties with respect to implementation of paragraphs 2(g)(1) (Other Case-Related Material) and 2(i)4 (Contraband) of the Commission’s Privileged Written Communications Order, AE 018U (Third Amended)³ (PWCO) to ensure the Privilege Review Team (PRT) understands how to properly apply these paragraphs of the PWCO. The motion asserts the parties agree that (1) Defense Counsel, not the PRT, decide whether material being sent to an Accused through the PRT is case-related; and (2) upon Defense Counsels’ written attestation that they reasonably believe materials submitted are related to the case and are not Contraband (provided the materials are properly marked)⁴ the PRT does not engage in further review of the materials.

2. In the Certificate of Conference, the Defense describes the Government’s position as “[U]nder the [PWCO], providing the Defense Counsel attests to his/her reasonable belief that the material is related to the case and thus falls outside of the ‘Contraband’ definition, it is

¹ AE 623 (WBA, RBS, AAA, MAH), Motion for Order Regarding the Parties’ Understanding on the Implementation of the Privileged Written Communications Order AE 018U (Third Amended), filed 8 April 2019.

² *Id.* at Attach. B.

³ AE 018U (3rd Amend) Third Amended Order, Privileged Written Communications, dated 28 March 2019.

⁴ These marking and attestation requirements are set out in Paragraph 3 of AE 018U (Third Amended).

Defense Counsel's decision to make, and not the [PRT's] decision."⁵ The Certificate of Conference did not state a Government position regarding the proposed order.

3. **Order.** To make a determination on this matter, the Commission requires the position of the Government regarding the proposed order. Not later than **12 April 2019**, the Government will notify the Commission of its position with respect to the order proposed by the Defense. Should the Government have substantive objections, the normal briefing cycle will be maintained starting from the filing of AE 623 (WBA, RBS, AAA, MAH).

So **ORDERED** this 10th day of April, 2019.

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

⁵ AE 623 (WBA, RBS, AAA, MAH) at para 5.