

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

<b>UNITED STATES OF AMERICA</b>  <b>v.</b>  <b>KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN ‘ATTASH, ALI ABDUL AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI</b>	<b>AE 630LLLLL /AE 631BBBB / AE 632CCCC</b>  <b>TRIAL CONDUCT ORDER<sup>1</sup></b>  Motions by Messrs. Mohammad, bin ‘Attash, and Hawsawi to Suppress Federal Bureau of Investigation (FBI) Letterhead Memoranda (LHM) Statements <sup>2</sup>  <b>3 December 2025</b>
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**1. Procedural History.**

a. Between 2016 and 2021, the Prosecution provided notice<sup>3</sup> of its intent to offer into evidence certain statements made by Messrs. Mohammad, bin ‘Attash, and Hawsawi, including their FBI LHM statements.

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<sup>1</sup> This Trial Conduct Order (TCO) applies only to motions filed by Messrs. Mohammad, bin ‘Attash, and Hawsawi. The Commission separately resolved a similar motion raised by Mr. Ali (a.k.a. al Baluchi) in AE 942SSSS, Ruling, Mr. al Baluchi’s Motion to Suppress Alleged Statements as Involuntary and Obtained by Torture, dated 11 April 2025.

<sup>2</sup> The FBI agents who interviewed each of the Accused wrote summaries of the oral statements made by each man during those interviews. The summaries were recorded on documents bearing the FBI’s letterhead. Those summaries are called “FBI Letterhead Memoranda” or “FBI LHM.” The underlying oral statements are called “FBI Letterhead Memoranda statements” or “FBI LHM statements.” The underlying oral statements have also been called “FBI Clean Team Statements.” See Unofficial/Unauthenticated Transcript of the *United States v Khalid Shaikh Mohammad et al.* (hereinafter “Tr.”), dated 20 June 2019 at 23484.

<sup>3</sup> See AE 477 (GOV), Government Notice Of Intent to Offer Certain Statements of the Accused Pursuant to MCRE 304(c)(2)(B), filed 28 December 2016; AE 477 (GOV Amended), Amendment to Government Notice of Intent to Offer Certain Statements of the Accused Pursuant to MCRE 304(c)(2)(B), filed 6 January 2017; AE 477 (GOV Sup), Government Supplemental Notice Of Intent to Offer Certain Statements of the Accused Pursuant to MCRE 304(c)(2)(B), filed 1 October 2019; and AE 477 (GOV 2nd Sup), Government Supplemental and Consolidated Notice of Intent to Offer Certain Statements of the Accused Pursuant to MCRE 304(c)(2)(B), filed 3 August 2021.

b. On 10 October 2023, the Commission ordered Messrs. Mohammad, bin ‘Attash, and Hawsawi to file motions to suppress their FBI LHM statements.<sup>4</sup>

c. Between 10 May 2019 and 1 February 2024, Messrs. Mohammad, bin ‘Attash, and Hawsawi each filed motions to suppress their FBI LHM statements.<sup>5</sup>

d. Between 24 May 2019 and 30 January 2020, the Prosecution filed responses in opposition.<sup>6</sup>

e. On 20 May 2019 and 4 June 2019, Messrs. Hawsawi and Mohammad, respectively, filed replies.<sup>7</sup>

f. On 19 July 2019, the Prosecution filed a consolidated notice of witnesses.<sup>8</sup>

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<sup>4</sup> AE 524AAAA / AE 628FFFFFF / AE 630QQQQ / AE 631Z / AE 632YY / AE 791A, \*Corrected Copy Trial Conduct Order, Defense Motions to Suppress Letterhead Memoranda Statements, dated 10 October 2023; AE 524DDDD / AE 628HHHHHHHHH / AE 630YYYY / AE 631VV / AE 632LLL / AE 791C, Second Trial Conduct Order, Defense Motions to Suppress Letterhead Memoranda Statements, dated 26 March 2024; AE 524EEEE / AE 630HHHHH / AE 631RRR / AE 632ZZZ / AE 791D / AE 942II, Third Trial Conduct Order, Defense Motions to Suppress Letterhead Memoranda (LHM) Statements, dated 23 May 2024; AE 524FFFF / AE 630JJJJ / AE 632AAAA / AE 791E / AE 942VVV, Fourth Trial Conduct Order Defense Motions to Suppress Letterhead Memoranda (LHM) Statements, dated 8 October 2024.

<sup>5</sup> AE 630 (KSM), Mr. Mohammad’s Motion to Suppress Letterhead Memorandum Statements Because the Government Cannot Demonstrate by a Preponderance of the Evidence that They Were Voluntarily Given, filed 10 May 2019; AE 630 (KSM Sup), Mr. Mohammad’ Supplement to AE 630 (KSM), Mr. Mohammad’s Motion to Suppress Letterhead Memorandum Statements Because the Government Cannot Demonstrate by a Preponderance of the Evidence that They Were Voluntarily Given, filed 8 February 2024; AE 631L (WBA), Notice of Classified Filing, filed 18 October 2019; AE 632U (MAH), Mr. al Hawsawi’s Motion to Suppress Statements Made to the FBI on Grounds of Involuntariness, filed 16 January 2020; AE 632U (MAH Sup), Mr. al Hawsawi’s Update to AE 632U, Motion to Suppress Statements Made to the FBI on Grounds of Involuntariness, filed 1 February 2024.

<sup>6</sup> AE 630C (GOV), Corrected Copy Government Response to Mr. Mohammad’s Motion to Suppress Letterhead Memorandum Statements Because the Government Cannot Demonstrate by a Preponderance of the Evidence that They Were Voluntarily Given, filed 24 May 2019; AE 631M (GOV), Government Response To Mr. Bin Attash’s Motion to Suppress Purported Statements as Involuntary, filed 1 November 2019; AE 632AA (GOV), Government Response to Mr. Hawsawi’s Motion to Suppress Statements Made to the FBI on Grounds of Involuntariness, filed 30 January 2020.

<sup>7</sup> AE 630E (KSM), Mr. Mohammad’s Reply to AE 630C (GOV), filed 4 June 2019; AE 632C (MAH), Mr. al Hawsawi’s Reply to AE 632A (GOV), Government Response to Mr. al Hawsawi’s Motion in Response to AE 524RRR, Ruling, Regarding Scheduling the Filing of a Motion to Suppress FBI Statements, filed 30 May 2019.

<sup>8</sup> AE 628L / 629B / 630H / 631C / 632D (GOV), Government Consolidated Notice of Witnesses It Intends to Call Demonstrating Voluntariness and Reliability of the Accused’s 2007 and 2008 Statements to Law Enforcement, filed 19 July 2019.

g. Between 29 July 2019 and 24 September 2019, the Prosecution filed consolidated notices of exhibits.<sup>9</sup>

h. On 3 April 2020 and 18 January 2024, the Prosecution filed Proposed Interim Unclassified Findings of Fact.<sup>10</sup>

i. On 29 April 2020 and 18 January 2024, the Prosecution filed proposed stipulations of fact<sup>11</sup> regarding the Central Intelligence Agency's (CIA) Rendition, Detention, and Interrogation (RDI) program, the standard operating procedures applicable to CIA "black sites," and each of the Accused's experiences while in the CIA's RDI program at CIA black sites.

j. On 31 July 2024, Messrs. Mohammad, bin 'Attash, and Hawsawi entered into pretrial agreements (PTA) with the Convening Authority.<sup>12</sup> From that date, Messrs. Mohammad, bin 'Attash, and Hawsawi ceased active participation in the litigation of their motions to suppress their FBI LHM statements.

k. On 2 August 2024, the Secretary of Defense withdrew from the PTAs.<sup>13</sup> The Secretary's action has been the subject of litigation before the Commission and in the appellate courts. That litigation is described later in this order.

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<sup>9</sup> AE 628WW / 629F / 630J / 631H / 632N (GOV), Government Consolidated Notice of Exhibits, filed 20 September 2019; AE 628FFF / 629G / 630K / 631J / 632O (GOV), Government Consolidated Notice of Exhibits, filed 24 September 2019.

<sup>10</sup> AE 791 (GOV), Government Notice of Proposed Interim Unclassified Findings of Fact, filed 3 April 2020; AE 791B (GOV), Government Second Notice of Proposed Interim Unclassified Findings of Fact, filed 18 January 2024.

<sup>11</sup> AE 630AAAA (GOV), Government Notice of Proposed Stipulation of Fact, filed 29 April 2020 (relating to Mr. Mohammad); AE 631V (GOV), Government Notice of Proposed Stipulation of Fact, filed 29 April 2020 (relating to Mr. bin 'Attash); AE 632NN (GOV), Government Notice of Proposed Stipulation of Fact, filed 29 April 2020 (relating to Mr. Hawsawi); AE 628RRRRRRR (GOV) / AE 630TTTT (GOV) / AE 631BB (GOV) / AE 623AAA (GOV), Government Notice of Demonstrative Supplement to Proposed Stipulation of Fact, filed 18 January 2024.

<sup>12</sup> See AE 955 (GOV), Government Notice of Under Seal Filing, filed 1 August 2024 (relating to Mr. Mohammad); AE 956 (GOV), Government Notice of Under Seal Filing, filed 1 August 2024 (relating to Mr. bin 'Attash); and AE 957 (GOV), Government Notice of Under Seal Filing, filed 9 August 2024 (relating to Mr. Hawsawi).

<sup>13</sup> AE 957A (GOV), Government Notice of Secretary of Defense Memorandum, filed 2 August 2024.

l. On 7 August 2024, the Commission announced that, pending resolution of litigation regarding the validity of Secretary's decision to withdraw from the PTAs, the Commission would proceed with Mr. Ali's motion to suppress his FBI LHM statements separately from the motions filed by Messrs. Mohammad, bin 'Attash, and Hawsawi.<sup>14</sup>

m. On 6 November 2024, the Commission issued a Ruling in AE 955J / AE 956J / AE 957I<sup>15</sup> holding that the PTAs signed by the Convening Authority and Messrs. Mohammad, bin 'Attash, and Hawsawi were "valid and enforceable"<sup>16</sup> and granting the Defense request to "schedule a hearing for the entry of pleas."<sup>17</sup>

n. On 11 July 2025, the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Cir.") issued an opinion,<sup>18</sup> accompanied by an order,<sup>19</sup> that became effective on 1 August 2025, which vacated the Commission's Ruling in AE 955J / AE 956J / AE 957I, and invalidated the PTAs signed by Messrs. Mohammad, bin 'Attash, and Hawsawi.

o. On 6 August 2025, Messrs. Mohammad, bin 'Attash, and Hawsawi filed a motion to suspend<sup>20</sup> all Commission proceedings pending possible further appellate proceedings before the D.C. Cir., and possibly the U.S. Supreme Court, regarding the invalidated PTAs.

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<sup>14</sup> Tr. at 49478-49482 (7 August 2024); *see also* AE 524FFFF / AE 630JJJJ / AE 631UUU / AE 632AAAA / AE 791E / AE 942VVV, Fourth Trial Conduct Order, Defense Motions to Suppress Letterhead Memoranda (LHM) Statements, dated 8 October 2024, at para 3.a (suspending deadlines for Messrs. Mohammad, bin 'Attash, and Hawsawi).

<sup>15</sup> AE 955J / AE 956J / AE 957I Ruling, Defense Motions to Schedule Entry of Pleas, dated 6 November 2024.

<sup>16</sup> *See id.* at 17, ¶ 4.a.

<sup>17</sup> *See id.* at 29, ¶ 5.b.

<sup>18</sup> The D.C. Cir. opinion is available at AE 955NN (GOV) / AE 956JJ (GOV) / AE 957HH (GOV), Government Notice Regarding *In Re United States*, No. 25-1009 (D.C. Cir.), filed 11 July 2025, Attach. C; also available at *In re United States*, 143 F.4th 411 (D.C. Cir. 2025).

<sup>19</sup> *See id.* At Attach. B.

<sup>20</sup> AE 982 (KSM WBA MAH), Defense Request to Suspend Military Commission's Hearings and Contested Proceedings Pending Final Adjudication of Litigation Regarding Pretrial Agreements, filed 6 August 2025.

p. On 19 September 2025, the Commission denied Messrs. Mohammad, bin ‘Attash, and Hawsawi’s motion to suspend Commission proceedings pending possible Defense appeal of the D.C. Cir.’s PTA decision.<sup>21</sup>

q. On 24 September 2025, Messrs. Mohammad, bin ‘Attash, and Hawsawi filed petitions for a rehearing *en banc* before the D.C. Cir. asking that Court to reconsider its PTA decision.<sup>22</sup> The D.C. Cir. has yet to consider those petitions for a rehearing *en banc*.

r. On 30 October 2025, Messrs. bin ‘Attash and Hawsawi filed a motion before the D.C. Cir. asking that Court to stay further Commission proceedings pending that Court’s resolution of the petitions for a rehearing *en banc*.<sup>23</sup> The D.C. Cir. has yet to resolve that motion for a stay.

## **2. Law.**

a. Military Commission Rule of Evidence (M.C.R.E.) 304 governs the admissibility of an accused’s statements.

b. M.C.R.E. 304(d) provides that “[w]hen an appropriate motion or objection has been made by the defense under this rule, the prosecution has the burden of establishing the admissibility of the evidence.”<sup>24</sup>

c. M.C.R.E. 304(a)(1) prohibits the admission of an accused’s statements if they were “obtained by the use of torture, or by cruel, inhuman, or degrading treatment.”<sup>25</sup>

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<sup>21</sup> AE 982C, Ruling and Order, Defense Request to Suspend Military Commission’s Hearings and Contested Proceedings Pending Final Adjudication of Litigation Regarding Pretrial Agreements, dated 19 September 2025.

<sup>22</sup> AE 955OO (KSM) / AE 957II (MAH), Mr. Mohammad and Mr. Al Hawsawi’s Notice of Filing Petition for Rehearing *En Banc* in the United States Court of Appeals for the District of Columbia Circuit, filed 29 September 2025; Respondent Walid bin ‘Attash’s Petition for Rehearing *En Banc*, *In re United States*, No. 25-1009 (D.C. Cir. 24 September 2025).

<sup>23</sup> AE 956LL (WBA) / AE 957KK (MAH), Mr. bin ‘Attash and Mr. al Hawsawi’s Notice of Federal Court Filing regarding *In Re United States*, 25-1009, filed 3 November 2025.

<sup>24</sup> See also 10 U.S.C. § 948r(a) (stating same).

<sup>25</sup> See also 10 U.S.C. § 948r(a) (stating same).

d. M.C.R.E. 304(a)(2) generally prohibits the admission of an accused's statements if they were not voluntarily given:

(2) *Other Statements of the Accused.* A statement of the accused may be admitted in evidence in a military commission only if the military judge finds—

(A) that the totality of the circumstances renders the statement reliable and possessing sufficient probative value; and

(B) that—

(i) the statement was made incident to lawful conduct during military operations at the point of capture or during closely related active combat engagement, and the interests of justice would best be served by admission of the statement into evidence; or

(ii) the statement was voluntarily given.<sup>26</sup>

e. M.C.R.E. 304(a)(5) generally prohibits the admission of both (i) [e]vidence derived from a statement obtained by torture or cruel, inhuman, or degrading treatment<sup>27</sup> and evidence derived from other excludable statements of the accused.<sup>28</sup>

### 3. Findings.

a. As conceded by the Prosecution,<sup>29</sup> Messrs. Mohammad, bin 'Attash, and Hawsawi have all made appropriate motions under M.C.R.E. 304(d) to suppress their FBI LHM statements.

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<sup>26</sup> See also 10 U.S.C. § 948r(c)(2)(B) (stating same).

<sup>27</sup> M.C.R.E. 304(a)(5)(A); see also M.C.R.E. 304(b)(3) for the definition of torture, and M.C.R.E. 304(b)(4) for the definition of "cruel, inhuman, or degrading treatment." M.C.R.E. 304 was added following the promulgation of the Military Commissions Act of 2009 ("M.C.A."), P.L. 111-84, Div. A, Title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2580, and published in the M.M.C. (2019 ed), mirroring 10 U.S.C. § 948(a). However, its prohibitions have been long held in our jurisprudence. See also, The Detainee Treatment Act of 2005, Sec. 1003; 42 U.S.C. § 2000dd; The 1984 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Art. 15 (Dec. 10, 1984) 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20 (1988); 23 I.L.M. 1027 (1984).

<sup>28</sup> M.C.R.E. 304(a)(5)(B).

<sup>29</sup> See AE 630C (GOV), Corrected Copy Government Response to Mr. Mohammad's Motion to Suppress Letterhead Memorandum Statements Because the Government Cannot Demonstrate by a Preponderance of the

b. The Prosecution bears the burden under M.C.R.E. 304(d) of establishing, by a preponderance of the evidence, that Messrs. Mohammad, bin ‘Attash, and Hawsawi’s FBI LHM statements are admissible under M.C.R.E. 304(a).

#### 4. Order.

a. **Not later than (NLT) Tuesday, 23 December 2025**, the Prosecution shall file:

(1) In the AE 630 motion series, a notice providing:

(a) A list, with citation to the record for each item on the list, of all documentary evidence already of record the Prosecution intends to rely upon to meet its burden under M.C.R.E. 304(d) to establish, by a preponderance of the evidence, that Mr. Mohammad’s FBI LHM statements are admissible under M.C.R.E. 304(a).

(b) A list, with citation to the transcript for each item on the list, of all witness testimony already of record the Prosecution intends to rely upon to meet its burden under M.C.R.E. 304(d) to establish, by a preponderance of the evidence, that Mr. Mohammad’s FBI LHM statements are admissible under M.C.R.E. 304(a).

(2) In the AE 631 motion series, a notice providing:

(a) A list, with citation to the record for each item on the list, of all documentary evidence already of record the Prosecution intends to rely upon to meet its burden under

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Evidence that They Were Voluntarily Given, filed 24 May 2019, at 1-2; AE 631M (GOV), Government Response To Mr. Bin Attash’s Motion to Suppress Purported Statements as Involuntary, filed 1 November 2019, at 1-2; and AE 632AA (GOV), Government Response to Mr. Hawsawi’s Motion to Suppress Statements Made to the FBI on Grounds of Involuntariness, filed 30 January 2020, at 1. Each of these filings contains this concession by the Prosecution: [“As an appropriate motion has been made by the Defense to suppress a pretrial admission as being involuntary, the Prosecution has the burden of establishing admissibility of the statement, and the military judge must find by a preponderance of the evidence that the pretrial statement was voluntarily made before he may receive it in evidence. *See* MCRE 304(d).”]

M.C.R.E. 304(d) to establish, by a preponderance of the evidence, that Mr. bin ‘Attash’s FBI LHM statements are admissible under M.C.R.E. 304(a).

(b) A list, with citation to the transcript for each item on the list, of all witness testimony already of record the Prosecution intends to rely upon to meet its burden under M.C.R.E. 304(d) to establish, by a preponderance of the evidence, that Mr. bin ‘Attash’s FBI LHM statements are admissible under M.C.R.E. 304(a).

(3) In the AE 632 motion series, a notice providing:

(a) A list, with citation to the record for each item on the list, of all documentary evidence already of record the Prosecution intends to rely upon to meet its burden under M.C.R.E. 304(d) to establish, by a preponderance of the evidence, that Mr. Hawsawi’s FBI LHM statements are admissible under M.C.R.E. 304(a).

(b) A list, with citation to the transcript for each item on the list, of all witness testimony already of record the Prosecution intends to rely upon to meet its burden under M.C.R.E. 304(d) to establish, by a preponderance of the evidence, that Mr. Hawsawi’s FBI LHM statements are admissible under M.C.R.E. 304(a).

b. If the Prosecution desires to offer additional witness testimony in furtherance of meeting its burden under M.C.R.E. 304(a), the Prosecution shall file notice of said witnesses, in the relevant AE motion series, **NLT Tuesday, 23 December 2025.**

c. If the Prosecution wishes to offer testimony from additional witnesses by remote means<sup>30</sup>, the Prosecution shall file its request to offer testimony by remote means, in the relevant AE motion series, **NLT Tuesday, 23 December 2025.**

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<sup>30</sup> See Rule for Military Commission (R.M.C.) 703(c)(3).



d. **NLT Tuesday, 30 December 2025**, Messrs. Mohammad, bin ‘Attash, and Hawsawi shall file, in their respective motion series, a notice providing:

(1) A list, with citation to the record for each item on the list, of all documentary evidence already of record that has not been listed by the Prosecution as ordered above, and which is relevant to the Prosecution’s burden under M.C.R.E. 304(d) to establish, by a preponderance of the evidence, the admissibility of their FBI LHM statements under M.C.R.E. 304(a).

(2) A list, with citation to the transcript for each item on the list, of all witness testimony already of record that has not been listed by the Prosecution as ordered above, and which is relevant to the Prosecution’s burden under M.C.R.E. 304(d) to establish, by a preponderance of the evidence, the admissibility of their FBI LHM statements under M.C.R.E. 304(a).

e. It is the Commission’s intent to use the scheduled January 2026 session<sup>31</sup> to conduct hearings in the AE 630, AE 631, and AE 632 series wherein the Prosecution may present any additional documentary or testimonial evidence relevant to its burden under M.C.R.E. 304(a). Any motion to continue those hearings shall be filed, in the relevant AE motion series, **NLT Tuesday, 9 December 2025**.

f. It is the Commission’s intent to use the scheduled March 2026 session to conduct hearings in the AE 630, AE 631, and AE 632 series wherein the Prosecution may present argument. Any motion to continue those hearings shall be filed, in the relevant AE motion series, **NLT Tuesday, 10 February 2026**.

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<sup>31</sup> See AE 984 (Amend) \*Corrected Copy Amended Scheduling Order Calendar Year 2026, dated 24 November 2025; AE 984; Scheduling Order Calendar Year 2026, dated 18 August 2025.

g. It is the Commission's intent to use the scheduled May 2026 session to conduct hearings in the AE 630, AE 631, and AE 632 series wherein the Accused may present, if necessary, a case in rebuttal. Any motion to continue those hearings shall be filed, in the relevant AE motion series, **NLT than Tuesday, 31 March 2026.**

h. It is the Commission's intent to use the scheduled June 2026 session to conduct hearings in the AE 630, AE 631, and AE 632 series wherein the Accused may present, if necessary, argument. Any motion to continue those hearings shall be filed, in the relevant AE motion series, **NLT Tuesday, 19 May 2026.**

So **ORDERED** this 3rd day of December, 2025.

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MICHAEL A. SCHRAMA, Lieutenant Colonel, USAF  
Military Judge  
Military Commissions Trial Judiciary