

**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 BIN AL SHIBH, ALI ABDUL AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI</p>	<p>AE 643P</p> <p>ORDER</p> <p>Mr. bin ‘Atash’s Motion to Compel Production of Mr. Christian Reismeier and Mr. Jason Foster for Evidentiary Hearing on Mr. bin ‘Atash’s Motion to Disqualify the Convening Authority</p> <p>18 November 2019</p>
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1. **Procedural History.** On 16 August 2019, Mr. bin’ Attash moved the Commission to “compel . . . Mr. Christian Reismeier and Mr. Jason Foster as witnesses”¹ in support of his 9 July 2019 motion to disqualify Mr. Reismeier as Convening Authority.² The Government responded to the motion to compel on 30 August 2019,³ and Mr. bin ‘Attash replied on 6 September 2019.⁴ The parties argued the matter before the Commission on 7 November 2019.

2. **Law.**

a. **Burden of Proof.** As moving party, the Defense bears the burden of proving any facts prerequisite to the relief sought by a preponderance of the evidence.⁵

¹ AE 643E (WBA), Mr. bin ‘Atash’s Motion to Compel Production of Mr. Christian Reismeier and Mr. Jason Foster for Evidentiary Hearing on Mr. bin ‘Atash’s Motion to Disqualify the Convening Authority, filed 16 August 2019, para. 2.

² AE 643 (WBA), Mr. bin ‘Atash’s Motion to Disqualify the Convening Authority, filed 9 July 2019.

³ AE 643G (GOV), Government Consolidated Response To AE 643E (WBA), Mr. Bin ‘Attash’s Motion to Compel Production of Mr. Christian Reismeier and Mr. Jason Foster for Evidentiary Hearing on Mr. Bin ‘Attash’s Motion to Disqualify the Convening Authority And AE 643F (WBA), Mr. Bin ‘Attash’s Motion to Compel Material and Information Related to the Selection of Convening Authority Christian Reismeier, filed 30 August 2019.

⁴ AE 643I (WBA), Defense Reply to AE 643G (GOV), Government Consolidated Response to AE 643E (WBA), Mr. bin ‘Atash’s Motion to Compel Production of Mr. Christian Reismeier and Mr. Jason Foster for Evidentiary Hearing on Mr. bin ‘Atash’s Motion to Disqualify the Convening Authority and AE 643F (WBA), Mr. bin ‘Atash’s Motion to Compel Material and Information Related to the Selection of Convening Authority Christian Reismeier, filed 6 September 2019.

⁵ Rule for Military Commissions (R.M.C.) 905(c)(1)-(2).

b. **Witness Production.** The Defense “shall have reasonable opportunity to obtain witnesses and other evidence,”⁶ to include “production of any available witness whose testimony on a matter in issue on the merits or on an interlocutory question would be relevant and necessary.”⁷

3. **Analysis.** Based on the filings and argument of the parties, and the contents of certain past communications made by Mr. Reismeier (referenced by the Defense in oral argument), the Commission concludes the Defense has met its burden to show the testimony of Mr. Reismeier to be relevant and necessary to resolution of the motion to disqualify him. Accordingly, the Commission will direct his production. The Commission further concludes ruling as to Mr. Foster’s production would be premature at this time, as Mr. Reismeier’s testimony may be material to that decision. The motion will therefore be deferred as to Mr. Foster.

4. **Ruling.** The motion is **GRANTED** as to Mr. Reismeier, and **DEFERRED** as to Mr. Foster.

5. **Order.** The Government shall produce Mr. Reismeier to testify before the Commission at a date and time to be directed in a future docket order.

So **ORDERED** this 18th day of November, 2019.

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W. SHANE COHEN, Colonel, USAF
Military Judge
Military Commissions Trial Judiciary

⁶ R.M.C. 703(a).

⁷ R.M.C. 703(b)(1).