

**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 792A INTERIM RULING and ORDER TO SHOW CAUSE Mr. Mohammad’s Motion for Telephonic Communication with Counsel and Clarifying Modification of the Third Amended Privileged Written Communications Order 22 April 2020
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1. Background.

a. On 15 April 2020, Mr. Mohammad filed AE 792, seeking “an order from this Commission granting him timely telephonic and written communications with his defense team in a manner that at least partially compensates for the cessation of in-person legal meetings onboard Naval Station Guantanamo Bay, Cuba.”¹ In that pleading, Mr. Mohammad also requested this Commission order an expedited briefing schedule on the issues raised in AE 792.²

b. Three years ago, this Commission addressed a similar motion, albeit under different circumstances (prior to the many changes in procedure resulting from the COVID-19 outbreak).³ In denying that motion, the Commission found that the “alternative methods provided for communications and Counsel, while not the most optimal” were “marginally effective” at that time.⁴

¹ AE 792 (KSM), Mr. Mohammad’s Motion for Telephonic Communication with Counsel and Clarifying Modification of the Third Amended Privileged Written Communications Order, filed 16 April 2020.

²*Id.* at 4.

³ AE 183L Order, Joint Defense Motion for Telephonic Access for Effective assistance of Counsel, dated 17 May 2017.

⁴ *Id.* at 12.

2. **Facts.** For purposes of this Order, the Commission adopts as fact those facts asserted by the Defense in subparagraphs a through l of paragraph 4 of AE 792 (KSM).⁵

3. **Analysis.**

a. The national emergency caused by the COVID-19 Outbreak created a change in circumstances that has caused numerous delays in this case and adversely impacted the ability of the Accused and Defense Counsel to communicate.

b. The Commission does not see the need for an expedited briefing schedule. The Commission does, however, see a need for the Government expeditiously to explore the practicability of providing the Accused with some type of telephonic or other access by audio or video means to their Counsel in order to maintain forward progress on this case.

4. **Ruling.** The motion for an expedited briefing schedule is **DENIED**. The parties shall follow the normal briefing schedule.

5. **Order.** **No later than 29 April 2020**, the Government shall show cause as to why the Government currently cannot, or does not, provide a means of classified and/or unclassified, non-mail, audio or video communication between the Accused in this case and their Counsel.

a. The Government shall indicate what technological capabilities are currently available that could be used to facilitate such communication.

(1) If the technological capabilities are available, the Government shall provide explanations as to how they could be implemented consistent with the protection of national security.

(2) If the technological capabilities are not available, the Government shall inform the Commission if such capabilities exist elsewhere and provide a proposed course of action that would make such capabilities expeditiously available.

⁵ AE 792 (KSM) at 4-6.

b. The Government may also provide the Commission with an explanation of what security concerns, if any, would be created by the implementation of classified and/or unclassified, non-mail audio or video communication between the Accused in this case and their Counsel. If the Government provides such an explanation, it shall also provide recommendations as to measures that could be taken to eliminate or mitigate any such concerns while still facilitating the communication.

So **ORDERED** this 22nd day of April, 2020.

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