

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

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| UNITED STATES OF AMERICA v. KHALID SHAIKH MOHAMMAD; WALID MUHAMMAD SALIH MUBARAK BIN ‘ATTASH; RAMZI BINALSHIBH; ALI ABDUL AZIZ ALI; MUSTAFA AHMED ADAM AL HAWSAWI | AE 843 (GOV) Government Notice Of Position on Commission Scheduling Order for Calendar Year 2022 17 September 2021 |
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1. Timeliness

This Notice is timely filed in accordance with the Commission’s invitation during an R.M.C. 802 conference held on 15 September 2021.

2. Notice

The Prosecution asserts that it is in the best interests of justice for this Commission to be called into session in January 2022 and remain in session until all witness testimony deemed necessary for the Commission’s resolution of the five suppression motions is completed,¹ and all

¹ In the course of 44 days of pretrial suppression hearings conducted while Judge Cohen was presiding, 18 witnesses took the stand and testified for 37 days in court for a total of 136 hours and 45 minutes. To carry its burden in establishing voluntariness, reliability, and absence of coercion by the five Accused while confessing to the September 11, 2001 attacks, the Prosecution announced its intention to call 16 witnesses, but have since determined, based on previous testimony and evidence presented to the Commission, that it does not need to call all 16 witnesses. Of the 16 witnesses, FBI Special Agent Fitzgerald, FBI Special Agent Butsch, retired FBI Special Agent Perkins, FBI Fingerprint Examiner Fife, Mr. Charles Parker, Mr. Timothy Adams, the former Camp 7 Officer-in-Charge, and New Jersey Superior Court Judge Bernard DeLury have all testified, with Special Agent Butsch and the former Camp 7 Officer-in-Charge yet to complete their testimony. In addition, the Prosecution has agreed to produce additional Defense witnesses as part of the LHM suppression litigation. Those witnesses include retired FBI Special Agent James Fitzsimmons, FBI Special Agent Aaron Zebley, FBI Intelligence Analyst Brian Antol, DoD Criminal Investigation Task Force Special Agent Kevin Brannon, LCDR David Hanrahan, Dr. Reuben Gur, SFC Brandon Johnson, Mr. Ali Soufan, Military Commissions Defense Organization (“MCDO”) Investigator Donald Canestraro, MCDO Investigator Daniel Futrell, Mr. Basam Naem, JTF-GTMO medical provider WK5I, and former CIA contractors, Drs. Bruce Jessen and James Mitchell.

motions the Commission determines oral argument is necessary (of the 90+ new motions that now clog the docket) are argued. In the alternative, the Commission should schedule multiple extended sessions of at least eight weeks in duration during Calendar Year 2022, culminating with assembly of the members in Fall of 2022.²

To be clear, the nine-year-long practice of one, two, or three-week sessions every other month has proven remarkably inefficient and expensive, and lends itself to a perpetual motion filing and oral argument cycle that has prevented significant forward movement in this case for the better part of a decade. The Defense teams in this case have had over nine years to review evidence, develop their theories of the case, and file over 800 separate series of motions that have dominated the Commission's time and attention. Any notion that extended sessions are not practical or that the Parties cannot adequately prepare for such hearings should be rejected based on the sheer amount of litigation and time that has passed in this case since arraignment.

Based on past practice, and the fact that testimony from some witnesses have taken a week, if not more, it is imperative that this Commission resolve itself to holding extended sessions in order to bring finality to this case. The Prosecution is firmly committed to bringing this case to trial and will ensure all necessary logistical support to ensure that extended sessions and trial can occur in 2022. It does so mindful that any further delay in this case only serves to further degrade perishable witness testimony,³ and continues to stifle justice for the 2,976 men, women, and children who were murdered over 20 years ago.

² The Prosecution incorporates by reference AE 653B (GOV), Government Response to Mr. Ali's Proposed Modification to AE 653, Scheduling Order (19 Aug. 2019), which provides law and argument in support of holding Commission proceedings during Ramadan.

³ See AE 422 (GOV), Government Motion to Conduct Depositions of Certain Witnesses (21 Apr. 2016) (requesting to depose certain witnesses, who were infirm, the Prosecution identified as sentencing witnesses; some of whom later died).

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on the 17th day of September 2021, I filed AE 843 (GOV), Government Notice of Position on Commission Scheduling Order for Calendar Year 2022, with the Office of Military Commissions Trial Judiciary and I served a copy on counsel of record.

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Office of Military Commissions