

**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 881W</p> <p>RULING</p> <p>Defense Motion to Cancel the January 2022 Hearings</p> <p>3 January 2022</p>
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1. On 30 December 2021, Counsel for Messrs. Mohammad, bin ‘Attash, bin al Shibh, Ali (a.k.a. al Baluchi), and Hawsawi moved¹ the Commission to “postpone Commission hearings until such time as the risk from the surge in cases of COVID-19 is reduced, and hearings can be held without risk to the health and safety of all participants.² The motion also requested that the hearings currently scheduled for 10 – 21 January 2022 be cancelled, and an expedited briefing schedule order for the Government to respond.

2. Prior to, and after the filing of the Defense motion, the Commission has been monitoring the rise in Covid-19 cases due to the Omicron variant, the new more restrictive guidance by the Centers for Disease Control and the Department of Defense to combat the emerging Covid-19 surge, and the recent disruption to air travel due to the impact of Covid-19 on flight crews.³

3. On Sunday, 2 January 2022, the Commission *sua sponte* determined it was necessary to cancel the January 2022 hearings before trial participants traveled to the National Capital Region for the required Covid-19 testing and potential quarantine. Also on 2 January 2022, the Commission sent an advance notice of the cancellation of the January 2022 hearings to the trial participants

¹ AE 881V (KSM *et al*), Defense Motion to Cancel the January 2022 Hearings, filed 30 December 2021.

² The Defense conferred with the Government. The Government defers stating a position. *Id.* At 7.

³ These concerns are set forth in AE 881V (KSM *et al*) at 1-6.

via email to allow them to adjust their travel plans.⁴ On 3 January 2022, the Commission issued an amended 2022 scheduling order memorializing the cancellation.⁵

4. Ruling. The motion is **GRANTED IN PART**. The January 2022 Commissions hearings are cancelled as set forth in AE 847 (Amend). The motion is otherwise **DENIED**.

So **ORDERED** this 3rd day of January, 2022.

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MATTHEW N. MCCALL, Colonel, USAF
Military Judge
Military Commissions Trial Judiciary

⁴ The Commission notes that under the unique circumstances and time constraints, this decision to cancel the January 2022 hearings was made without benefit of the Government response to AE 881V (*KSM et al*). The Commission's normal preference is to receive and consider the Government response prior to issuing a decision on a given motion. The parties, however, are on notice that the Commission might also summarily deny a motion to cancel Commission hearings if the motion is made without sufficient time for input from the responding party.

⁵ See AE 847 (Amend), *Amended Scheduling Order*, dated 3 January 2022.