

**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 899</p> <p>DOCKET ORDER</p> <p>November 2022 Hearings</p> <p>13 October 2022</p>
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1. On 7 June 2022, the Commission issued an Amended Scheduling Order providing for hearings to take place at Naval Station Guantanamo Bay, Cuba (NSGB) from 7 - 18 November 2022.¹
2. On 12 September 2022, Mr. Mohammad suggested the Commission cancel the hearings scheduled for November 2022 in order “to permit the parties to continue further negotiations, and permit counsel for Mr. Mohammad to address any severance issues once the negotiations have run their course.”²
3. On 12 September 2022, the Prosecution indicated it remained committed to a joint trial for all five Accused, but implied³ that it would be willing to acquiesce in cancellation of the November 2022 hearings in order to allow Mr. bin Attash’s new Learned Counsel to prepare for the resumption of hearings in January of 2023.⁴ The Prosecution, however, also suggested that an

¹ See AE 847 (3rd Amend), Third Amended Scheduling Order, dated 7 June 2022.

² AE 896C (KSM), Mr. Mohammad’s Response to AE 299G / AE 896 SPECIFIED ISSUE ORDER, filed 12 September 2022 at 2.

³ See AE 896E (GOV), Government Response to Specified Issue Order, Defense Motion to Reconsider AE 299E, Order Denying Mr. Hawsawi’s Motion to Sever filed 12 September 2022.

⁴ See AE 895 Scheduling Order, dated 21 July 2022.

issue specific to just one of the Accused nonetheless could be argued at NSGB in November 2022 with just that Accused and his Counsel to be present.⁵

4. On 19 September 2022, Mr. Ali (a.k.a. al Baluchi) joined Mr. Mohammad’s request to cancel the November 2022 hearings and further requested the Commission issue the cancellation order prior to 21 September 2022 in order to allow Mr. Ali’s Defense Team to schedule case-related foreign travel during the November 2022 hearing dates.⁶ Mr. Ali’s requested timeline was based upon the fact that the current Convening Authority (CA) and Military Commissions Defense Organization (MCDO) Travel Office procedures require Defense Teams to “submit requests for overseas travel at least 45 days prior to the travel absent exigent circumstances.”⁷

5. On 19 September 2022, Mr. Hawsawi reiterated his previous request for severance, arguing that his case should not be delayed by the requested cancellations of hearing dates submitted by his Co-Accused.⁸

2. Analysis.

a. As previously recognized by this Commission, certain aspects of the plea negotiations involve “policy principles” which are beyond the CA to approve and which are therefore pending decision by United States policy makers.⁹ The Prosecution has estimated that a decision on these

⁵ See AE 896E (GOV) at 10.

⁶ See AE 896G (AAA), Mr. al Baluchi’s Consolidated Reply to Specified Issue Order Responses, filed 19 September 2022. Mr. Ali noted that the Prosecution declined the opportunity to state a position as to the cancellation request. Mr. Ali also indicated that Mr. bin ‘Attash concurred in his cancellation request and that Mr. bin al Shibh does not oppose said request.

⁷ *Id.* at 2.

⁸ See AE 896F (MAH), Defense Reply to AE 896E, Government Response to Specified Issue Order, filed 19 September 2022.

⁹ AE 893G Order Cancelling June/July 2022 Hearings, dated 7 June 2022, at 3.

“policy principles” may be reached prior to the scheduled January 2023 hearings, but not before the beginning of the November 2022 hearings.¹⁰

b. It is impracticable for this Commission to convene in an open session while a decision on the “policy principles” remains pending and while Mr. bin ‘Attash’s new Learned Counsel continues to build a relationship with his client and become familiar with the case. Likewise, it is not practicable for the Commission to hear oral argument at NSGB on a single issue concerning a single Accused as suggested by the Prosecution.

c. Accordingly, the Commission will cancel the hearings currently scheduled for November 2022.

d. This cancellation order is not issued in accordance with Mr. Ali’s requested timeline to enable him to submit a foreign travel request within 45 days of the beginning of the previously-scheduled November 2022 hearing. It appears to the Commission that such a travel request, if filed soon after the issuance of this order, should be deemed by the CA and the MCDO Travel Office to constitute “exigent circumstances,” thereby allowing for an exception to the normal processing guidelines.

e. Additionally, because further progress in the ongoing plea negotiations is somewhat dependent on the outcome of the “policy principles” decision, the Commission will also require the Prosecution to provide the Commission with updates as to the status of the “policy principles” decision, beginning on 16 December 2022 and continuing every two weeks until such time as the Prosecution has been informed that a decision has been reached.

¹⁰ AE 895C (WBA), Defense Motion to Cancel Hearings Scheduled for September – October 2022, filed 19 August 2022, at 9 (containing the Prosecution response to a prior motion to cancel hearings in September – October 2022).

3. Order.

a. The Commission hearings currently scheduled for 7 – 18 November 2022 are

CANCELLED.

b. The Prosecution will provide the Commission with an update as to the status of the decision on the “policy principles.” The first such status update will be due **No Later Than Friday, 16 December 2022**, and shall be supplemented **every two weeks thereafter** by further status updates until such time as the Prosecution has been notified of a final decision on said “policy principles.”

So **ORDERED** this 13th day of October, 2022.

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