

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

<p><b>UNITED STATES OF AMERICA</b></p> <p><b>v.</b></p> <p><b>KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN ‘ATTASH, ALI ABDUL AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI</b></p>	<p><b>AE 955D / AE 956B / AE 957C</b></p> <p><b>SPECIFIED ISSUE ORDER</b></p> <p>Actions of a Superior Convening Authority Pursuant to the Military Commissions Act</p> <p><b>12 August 2024</b></p>
---	--

**1. Procedural History.**

a. On 1 August 2024, the Prosecution filed three pretrial agreements (PTA) with the Commission. Each PTA was between the Convening Authority, Susan Escallier, and one of the individual Accused, Mr. Mohammad,<sup>1</sup> Mr. bin 'Attash,<sup>2</sup> and Mr. Hawsawi,<sup>3</sup> respectively.

b. The Prosecution's filing indicated the Convening Authority had approved each of the separate PTAs, on 31 July 2024, after they were signed by the individual Accused.<sup>4</sup>

c. On 2 August 2024, the Prosecution submitted a Memorandum signed by the Secretary of Defense,<sup>5</sup> in which the Secretary stated, in full:

I have determined that, in light of the significance of the decision to enter into pre-trial agreements with the accused in the above-referenced case, responsibility for such a decision should rest with me as the superior convening authority under the Military Commissions Act of 2009. Effective immediately, I hereby

---

<sup>1</sup> See AE 955 (GOV), Government Filing of Pre-Trial Agreement, filed 1 August 2024 (Under Seal).

<sup>2</sup> See AE 956 (GOV), Government Filing of Pre-Trial Agreement, filed 1 August 2024 (Under Seal).

<sup>3</sup> See AE 957 (GOV), Government Filing of Pre-Trial Agreement, filed 1 August 2024 (Under Seal).

<sup>4</sup> See AE 955 (GOV) at p.30; AE 956 (GOV) and at p. 29; and AE 957 at p.29.

<sup>5</sup> See AE 955B (GOV)/AE 956A (GOV)/AE 957A (GOV), Government Notice of Secretary of Defense Memorandum, Attachment B., filed 2 August 2024. The subject line of the memorandum referenced the cases of Messrs. Mohammad, bin 'Attash, Ali (a.k.a. al Baluchi), Hawsawi, and bin al Shibh.

withdraw your authority in the above-referenced case to enter into a pre-trial agreement and reserve such authority to myself.

Effective immediately, in the exercise of my authority, I hereby withdraw from the three pre-trial agreements that you signed on July 31, 2024 in the above-referenced case.

**2. Specified Issues.** After carefully reviewing the PTAs; Rules for Military Commissions (R.M.C) 103(a)(10), 401(a), 601(f), 604, and 705; and Regulation for Trial by Military Commission (2011) 12-1, in conjunction with the Secretary's Memorandum, the Commission requires briefings from the Prosecution and the three Defense teams with previously approved PTAs regarding the following Specified Issues:

a. R.M.C. 601(f) authorizes a Superior Convening Authority to cause referred charges to be transmitted to his/her authority for further consideration, to include referral. R.M.C. 604(a) authorizes a Superior Competent Authority to withdraw charges at any time before findings are announced. What authorities, if any, permit a Superior Convening Authority to withhold and reverse, or otherwise alter, the action of a lawfully designated Subordinate Convening Authority in an ongoing case that has been referred by that Subordinate Convening Authority?

b. What authorities, if any, permit the Secretary of Defense, as a Superior Convening Authority pursuant to the Military Commission Act, to withhold only a portion of the Convening Authority's substantive responsibilities<sup>6</sup> in a case referred by a lawfully designated Subordinate Convening Authority; and

c. Specifically, if there are authorities that correspond to the questions posed in paragraphs 2.a. or 2.b. above, do such authorities permit a Superior Convening Authority to act

---

<sup>6</sup> See Regulation for Trial by Military Commission (2011) 2-3.a.

on a matter after the Subordinate Convening Authority has already acted on that matter when that matter was within the discretion of that Subordinate Convening Authority.

**3. Order.**

a. **No later than 20 August 2024**, the Prosecution, Mr. Mohammad, Mr. bin ‘Attash, and Mr. Hawsawi<sup>7</sup> shall submit responsive legal briefs answering the Specified Issues in paragraph 2 above.<sup>8</sup>

b. Responses and Replies are not authorized.

So **ORDERED** this 12th day of August, 2024.

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

---

<sup>7</sup> While not a party to the PTAs, the Commission finds that Mr. Ali, as a co-Accused subject to the same convening authorities, shall be granted an opportunity to file a response within the same timeframe, should he choose to present a position.

<sup>8</sup> The Prosecution will separately attest that its response has been coordinated with and approved by the Convening Authority who intends to be bound by such responses.