

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

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<p><b>UNITED STATES OF AMERICA</b></p> <p><b>v.</b></p> <p><b>ENCEP NURJAMAN; MOHAMMED NAZIR BIN LEP; MOHAMMED FARIK BIN AMIN</b></p>	<p><b>AE 0028.007 (TJ)</b></p> <p><b>ORDER</b></p> <p><b>19 January 2022</b></p>
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**1. Procedural History.**

a. On 9 December 2021, this Commission issued a scheduling order setting a hearing on **28 February through 4 March 2022**, in the Expeditionary Legal Complex, U.S. Naval Station, Guantanamo Bay (NSGB), Cuba. In anticipation of the 28 February – 4 March hearing and in light of the Defense’s challenge to the sufficiency of the translations during the 30-31 August 2021 arraignment hearing,<sup>1</sup> the Commission required the Government to provide a status on the plan to provide interpreter support for the Commission and required the Defense to provide the status of interpreter support for the Defense teams.<sup>2</sup>

b. The Government filed a notice<sup>3</sup> informing the Commission of the plan to use two interpreters for the upcoming hearing – an Indonesian interpreter and a Malay interpreter. In the notice, the Government expressed concerns with only having one Indonesian and one Malay interpreter for the upcoming hearing. Additionally, the Government informed the Commission that “the Prosecution has concerns regarding the sufficiency of the Malay interpretation for the

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<sup>1</sup> See AE 0002.044 (AMI), Mr. Bin Amin’s Motion for a Hearing with Witnesses to Determine the Sufficiency of the 30 and 31 August Proceedings, filed 28 December 2021.

<sup>2</sup> See AE 0028.001 (TJ), Scheduling Order, dated 9 December 2021.

<sup>3</sup> See AE 0028.006 (GOV), Government Notice Regarding Status of Commission Interpreter Support, filed 10 January 2022.

scheduled hearings based on the interpretation provided by the same [Malay] interpreter during portions of the proceedings on 30-31 August 2021.”

c. Mr. Nurjaman, Mr. Bin Amin, and Mr. Bin Lep provided notice that each Defense team has interpreter support. However, each Defense team expressed concerns regarding the independence of their assigned interpreter(s) and whether the defense could rely on their assigned interpreters for attorney-client privileged communications.<sup>4</sup> The Defense teams all indicated they need assurances in order to be able to use their Government Provided Defense Interpreters (GPDIs) for attorney-client communications.<sup>5</sup>

## **2. Findings.**

a. On 2 February 2021, the Government provided notice of its interpreter plan that it would utilize during the arraignment and subsequent hearings.<sup>6</sup> The Government stated the Convening Authority would detail four interpreters for this Commission. The Government filed another notice with the Commission on 30 July 2021, notifying the Commission that while five interpreters have been employed for this Commission, only two would be available to travel to NSGB, Cuba for the 30-31 August hearing.

b. During and after the 30-31 August hearing, concerns were raised about the sufficiency of the Malay interpretation provided by the Malaysian Commission Interpreter.<sup>7</sup> These concerns continue to be raised by all Parties, to include the Government. In addition to the concerns noted in AE 0028.005 (GOV), the Government has also stated the Malaysian “interpretation of the [August 30] proceedings prior to the arraignment were flawed and incomplete; however, the

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<sup>4</sup> AE 0028.002 (LEP), Defense Notice of Interpreter Support Status, filed 6 January 2022; AE 0028.003 (NUR), Defense Notice of Interpreter Support, filed 7 January 2022; and AE 0028.005 (AMI), Mr. Bin Amin’s Notice of Interpreter Support, filed 7 January 2022.

<sup>5</sup> Id.

<sup>6</sup> AE 0008.001 (GOV), Government Notice of Interpreter Plan, filed 2 February 2021.

<sup>7</sup> See AE 0002.043 (TJ), Ruling, Defense Motion to Order a New Arraignment, dated 4 November 2021.

arraignment portion of the proceedings was accurately interpreted.”<sup>8</sup> The Malaysian interpreter identified by the Government for the upcoming hearing is the same interpreter utilized for the August 2021 hearing.

c. The sufficiency of the translations provided during the 30-31 August 2021 hearing continues unresolved. The Government proposal to once again using only one interpreter for each language is during the scheduled hearing in February 2022 is inadequate support. Therefore, absent prior approval of the Commission, the Government will identify two interpreters per language for future hearings.

d. An independent analysis of the interpretation by the Malaysian interpreter’s work during the 30-31 August 2021 hearing has not been conducted.

### **3. Order.**

a. **No later than 1 February 2022**, the Government will provide an updated Interpreter Support Plan for the 28 February-4 March 2022 hearing. This Interpreter Support Plan will identify at least 2 interpreters for each language who will be available to support the Commission during the upcoming hearing either from NSGB, Cuba or remotely from a location in the National Capital Region. All interpreters will possess appropriate security clearances and screened for potentially disqualifying work histories.

b. The Government will coordinate with the Office of the Military Commission for an analysis of the Malaysian interpretation of the 30-31 August hearing by an interpreter who does not work for the Defense or the Prosecution. This assessment will be filed with the Commission and provided to all Parties **no later than 8 February 2022**.

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<sup>8</sup> AE 0002.045 (GOV), Government Response to Mr. Bin Amin’s Motion for a Hearing with Witnessed to Determine the Sufficiency of the 30 and 31 August Proceedings, filed on 11 January 2022.

c. **No later than 1 February 2022**, Defense will provide a proposed order for this Commission to issue that will alleviate Defense concerns regarding the independence of their GPDIs.

d. **No later than 8 February 2022**, Defense will file any objections they have to the interpreters identified in AE 0028.005 (GOV) or to those identified by the Government in their Updated Interpreter Support Plan directed above.

So **ORDERED** this 19th day of January, 2022.

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HAYES C. LARSEN  
CDR, JAGC, USN  
Military Judge