

UNCLASSIFIED//FOR PUBLIC RELEASE  
MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY, CUBA

**UNITED STATES OF AMERICA**

v.

**ABD AL RAHIM HUSSAYN  
MUHAMMAD AL NASHIRI**

**AE 331G**

**SECOND AMENDED DOCKETING  
ORDER  
(February 2015 Hearing)**

**18 FEBRUARY 2015**

1. A hearing in this case will take place 23 February 2015 through 6 March 2015 at the U.S. Naval Station, Guantanamo Bay, Cuba. The hearing will begin at 0900 on Monday, 23 February 2015.
2. The Accused must be present for the beginning of the session on 23 February 2015. He will be reminded of his right to be present during interlocutory proceedings at his option, in accordance with this Commission's written order (AE 099F).
3. A Rule for Military Commission (R.M.C.) 802 Conference will be conducted on Sunday, 22 February 2015 at 1600 at Courtroom#2 (ELC), U.S. Naval Station, Guantanamo Bay, Cuba to discuss the sequence of argument and changes to this Amended Docketing Order.
4. In light of the various filings by both parties<sup>1</sup> and rulings issued by the Commission without oral argument<sup>2</sup> since the publication of the original Docketing Order for this hearing (AE 331), the Commission amends the sequence of presentations and arguments set out in paragraph 4 of AE 331, Docketing Order, dated 6 January 2015, by deleting paragraph 4 of AE 331 and adding paragraph 5 of this Amended Docketing Order.

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<sup>1</sup> New motions include: AE 331A, AE 332, AE 319F, AE 319G, AE 319I, AE 319J, AE 333, AE 334, and AE 335.

<sup>2</sup> The Commission issued the following rulings: AE 246K, RULING, Defense Motion to Strike: AE 246E Government Notice Of Bill Of Particulars (Application Of Aggravating Factor #1 To Charge I), dated 3 February 2015; AE 247H, RULING, Defense Motion To Strike: AE 247E Government Notice Of Bill Of Particulars (Application Of Aggravating Factor #1 To Charge II), dated 3 February 2015; and, AE 248G, RULING Defense Motion To Strike: AE 248C Government Notice Of Bill Of Particulars (Charge IV, Specification 1), dated 3 February 2015.

5. It is hereby **ORDERED** the sequence of presentations and arguments during the hearing will occur in the following general order:

a. The Commission will first hear argument on the following motions:

(1) AE 332, Defense Motion to Dismiss for Unlawful Influence and Denial of Due Process for Failure to Provide an Independent Judiciary;

(2) AE 334, Defense Motion for Appropriate Relief to Allow Mr. Al Nashiri to Groom Prior to Court Sessions and Meetings with his Defense Team.

(3) AE 272D, Government Motion for Reconsideration and Clarification of AE 272C - Ruling - Defense Motion for Appropriate Relief: Inquiry into the Existence of a Conflict of Interest Burdening Counsel's Representation of the Accused Based on Ongoing Executive Branch Investigations;

(4) AE 331A, Government Motion To Amend the Docketing Order (February 2015 Hearing) To Allow The Government To Determine The Manner In Which It Presents Its Evidence Relating To The Admissibility Of Government-Noticed Hearsay And Evidence Identified In AE 207;

(5) AE 319I, Defense Motion to Continue the Evidentiary Hearings Related to AE 166 *et seq* and AE 319 Until Preliminary Matters are Resolved;

(6) AE 319J, Defense Motion to Continue Further Hearings on the Government's Motion to Admit Hearsay Until the Court of Military Commissions Review Renders a Final Judgment on Appeal;

(7) AE 328, Defense Motion for a Fair Hearing on the Admissibility of Evidence as Noticed in AE 166 and AE 166A;<sup>3</sup>

(8) AE 319F, Defense Motion to Compel Discovery Related to AE166/166A/166B and Seeking Further Appropriate Relief;

(9) AE 319G, Defense Motion to Compel Witnesses to Testify at the Hearing on AE166/166A/166B/319;

(10) AE 256D, Defense Motion to Strike AE 256C: Government Notice of Bill of Particulars (Defining Civilian Population as Used in Aggravating Factor #5);

(11) AE 257D, Defense Motion to Strike AE 257C: Government Notice of Bill of Particulars (Defining Civilian Population as Used in Aggravating Factor #5);

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<sup>3</sup> Absent an objection by the Defense, the Commission intends to include the hearsay statements the Prosecution provided notice of in AE 166B as part of this Defense motion.

(12) AE 324, Government Motion *In Limine* for the Commission to Admit Evidence from the Truck, Trailer, and Launch (Argument limited to whether the Commission should conduct an evidentiary hearing.);

(13) AE 325, Government Motion *In Limine* for The Commission to Admit Evidence from the Madinat Al-Shaab Residence (Argument limited to whether the Commission should conduct an evidentiary hearing.);

(14) AE 326, Government Motion *In Limine* for the Commission to Admit Evidence from the Al-Tawahi Residence (Argument limited to whether the Commission should conduct an evidentiary hearing.);

(15) AE 327, Defense Motion to Suppress Custodial Statements Made by Mr. Jamal Al Badawi to Federal Agents;

(16) AE 333, Defense (Classified) Motion To Dismiss For Violations of *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972); and,

(17) AE 335, Defense Motion to Suppress Custodial Statements Made by Mr. Ahmed Mohammed Ahmed Haze (Al-Darbi) to Federal Law Enforcement Agents between 24 August- 3 September 2002 and Derivative Evidence, As Required By 10 U.S.C. § 948r and The Fifth Amendment; and,

**(18) 248H, Government Motion To Reconsider AE 248G, ¶ 5, And Allow The Government To Prove The Accused’s “Wanton Disregard For Human Life” By Introducing Relevant And Probative Evidence Relating To Foreign Nationals Located On Or Around USS COLE (DDG 67) At The Time Of The Attack.**<sup>4</sup>

b. At the conclusion of argument on the motions listed in paragraphs 5.a. (1), and (4) - (7) above, and if they are resolved in such a manner which allows for the conduct of an evidentiary hearing, the Parties will be prepared to conduct an evidentiary hearing. The evidentiary hearing will allow the Government the opportunity to lay a foundation as to the admissibility of 10 hearsay statements it provided notice of intent to admit in the AE 166<sup>5</sup> series and the opportunity to lay a foundation as to the admissibility of 10 pieces of evidence it listed in AE 207.<sup>6</sup>

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<sup>4</sup> Addition of AE 248H to the docketing order per the Government’s unopposed request at AE 331F, Government Motion to Amend AE 331E, Amended Docketing Order (February 2015 Hearing).

<sup>5</sup> Notice to the Defense of the Government’s Intention to Offer Certain Items of Corroborated, Lawfully Obtained, Probative, and Reliable Hearsay Evidence Where the Declarants Are Unavailable, Hostilities Pose Unique Circumstances, and Admission is in the Interest of Justice, Pursuant to the M.C.A., 10 U.S.C. § 949a(b)(3)(D), and M.C.R.E. 803(b)(1). The Government has filed four (4) notices in this series, AE 166, AE 166A, AE 166B and AE 166C.

<sup>6</sup> Government Motion *In Limine* for The Commission to Admit Evidence, filed 4 February 2014.

The Prosecution filed AE 331D<sup>7</sup> in compliance with the original docketing order (AE 331) providing the Defense and the Commission notice as to which hearsay statements from the AE 166 series and what pieces of evidence listed in AE 207 it intends to seek admission for during this session. The evidentiary hearing will not start before Monday, 2 March 2015.

c. If fully briefed and with the concurrence of the parties, the Commission may hear argument on the following additional motions during the February hearings:

(1) Any motion to compel the hiring of expert assistance previously denied by the Convening Authority filed in accordance with paragraph 4d of AE 207C;

(2) Any motion to compel the hiring and/or production of expert witnesses previously denied by the Convening Authority or the Prosecution and filed in accordance with paragraph 4d of AE 207C;

(3) Any motion to compel the production of other fact witnesses previously denied by the Prosecution and filed in accordance with paragraph 4e of AE 207C;

(4) Any motion to compel the production of discovery associated with items the Prosecution intends to offer into evidence in AE 207;

d. A hearing under the provisions of Military Commission Rule of Evidence (M.C.R.E.) 505(h) will be conducted, as necessary, at the U.S. Naval Station, Guantanamo Bay, Cuba. Pursuant to M.C.R.E. 505(h)(1)(C), the hearing will be in camera and closed to the public. The Accused will not be present.

e. The time which has transpired since arraignment until the date of the next session (23 February 2015) shall be considered excludable delay in accordance with R.M.C. 707(b)(4)(E)(i) and R.M.C. 707(c). I find that the interests of justice have been served by granting continuances

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<sup>7</sup> AE 331D, Government Notice of Hearsay Statements and Evidence for Which the Government Intends to Seek Admission during the February/March 2015 Pretrial Sessions, filed 22 January 2015.

for the resolution of interlocutory and other pretrial issues, and that the resolution of these issues outweighs the interests of the public and the Accused in a prompt trial.

So **ORDERED** this 18th day of February, 2015.

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VANCE H. SPATH, Colonel, USAF  
Military Judge  
Military Commissions Trial Judiciary