

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

UNITED STATES OF AMERICA v. ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI	AE 348M ORDER 17 November 2017
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On 8 October 2015, the Defense filed a motion to abate the proceedings until Commander (CDR) Brian Mizer was restored to the defense team.¹ The Defense, in its motion, claimed CDR Mizer’s withdrawal constituted an improper severance of the attorney-client relationship without good cause. (AE 348 at 1). The Defense further stated:

Commander Mizer has devoted a substantial amount of time, effort, and preparation to the case, even though it has not yet been to trial—a time commitment due in large part to the fact that this is a capital case. He also is the only military counsel remaining on the case with significant experience litigating before the Commission and the only military counsel remaining who has significant national security experience as well as capital experience. He is not replaceable, either in terms of his general experience level or the amount of time he has committed to this type of litigation, and so his loss would greatly prejudice the defense.

(AE 348 at 4). On 7 September 2017, Commander Mizer testified to his capital qualifications before the Commission.²

Pursuant to Rule for Military Commission 905(f), the Commission has reconsidered its ruling in AE 348L in light of new facts, notably the voluntary abandonment of the Accused’s appointed outside learned counsel, Mr. Richard Kammen. Accordingly, the Defense motion to abate the proceedings remains **DENIED**, however the Commission finds that CDR Mizer’s attorney/client

¹ AE 348, Defense Motion to Abate Proceedings Pending Restoration of Commander Brian Mizer to the Defense Team, filed 8 October 2015.

² Unofficial/Unauthenticated Transcript of the Al Nashiri (2) Motions Hearing Dated 11/3/2017 from 1:00 PM to 1:38 PM at pp. 6164-6188.

relationship with the Accused should not be severed in light of these new facts. Accordingly, the Commission **ORDERS** the Government to provide the Commission weekly updates on the status of the Convening Authority's efforts to recall CDR Mizer to serve as learned counsel in this case. The weekly updates will be accepted as a written filing by close of business on Friday and begin on 1 December 2017 until such order is rescinded by the Commission.

So **ORDERED** this 17th day of November, 2017.

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