

**CHIEF PROSECUTOR MARK MARTINS**  
**REMARKS AT GUANTANAMO BAY**  
**17 JULY 2016**

Good morning. Before I update you on the upcoming proceedings and developments in ongoing military-commission cases, please let us pause to remember those who were killed and wounded in Thursday's attack in Nice, France. From Benghazi to Boston, Madrid to Orlando, and now Istanbul to Nice, we are tragically reminded of September 11th. A growing number among us have become able to say that we or someone close to us has experienced terrorism. The images are etched into the collective memory like it happened yesterday.

And yet more enduring than those memories are the memories of the fallen who live on in their family and friends. The memory of Joseph Holland III survives in his father, who follows these proceedings, and his son, who was born just ten days after he died on the 92nd floor of the World Trade Center. The legacy of Andrew Stern, who worked for Cantor Fitzgerald and perished along with 657 other Cantor employees in the North Tower of the World Trade Center, is likewise carried on by his children. George DiPasquale is still remembered by his nickname "Holy Man" for sharing his faith and hope with his fellow FDNY firefighters. Susan Clyne, who worked on the 96th floor of the World Trade Center's North Tower, is honored by her children who release balloons each year on her birthday with letters of hope. Little things Lisa Fenn Gordenstein did, like leaving motivational notes and giving people nicknames, continue to encourage her loved ones and make them feel special. The rescue efforts of Moira Ann Smith, the only female officer of the NYPD fallen, were recognized with the NYPD Medal of Honor and inspire countless others. We pay tribute to these 9/11 fallen and their families, all of whom battle their wounds, seen and unseen, as we continue to draw inspiration from their resolve.

Today, the Military Commission convened to try Khalid Shaikh Mohammad, Walid Muhammad Salih Mubarak Bin 'Attash, Ramzi Binalshibh, Ali Abdul Aziz Ali, and Mustafa Ahmed Adam al Hawsawi will hold another series of pre-trial sessions without panel members present. These five Accused stand charged with plotting the attacks of September 11th, which resulted in the deaths of nearly 3,000 persons. The charges against the Accused, and each Accused mentioned in these remarks, are only allegations. They are presumed innocent unless and until proven guilty beyond a reasonable doubt. Matters under consideration by a military commission in this or any other particular case are authoritatively dealt with by the presiding Judge. Any comments addressing systemic issues that are the subject of frequent questions by interested observers should always be understood to defer to specific judicial rulings, if applicable.

Although I will not comment on the specifics of any motions pending before a military commission, I will provide background for this round of pre-trial sessions, and then I will survey important developments in ongoing military commission cases.

## **Developments in *United States v. Mohammad, et al.***

This round of pre-trial sessions that begins tomorrow is expected to go through 29 July 2016. The Docketing Order for these sessions is Appellate Exhibit 433. The Commission has indicated its intent to receive evidence and oral argument, as necessary, regarding 59 motions. *See* AE 433. Each of these 59 motions has previously been fully briefed.

The Commission consolidated much of the outstanding discovery litigation when it granted the government's request to consolidate motions to compel the government to produce information relating to the Central Intelligence Agency's ("CIA") former Rendition, Detention, and Interrogation ("RDI") Program. *See* AE 397F. This litigation will likely become ripe for further argument in October. Meanwhile, the government is working seven days a week, including holidays, to comply with the Commission's order adopting a ten-category construct first established by the Commission in *United States v. Al Nashiri*. The *Al Nashiri* Commission established the construct "to focus the Prosecution's analysis of information as it unilaterally fulfills its discovery obligations and responds to current and future discovery requests" from the defense for information regarding the former RDI Program. AE 120AA, *United States v. Al Nashiri*. Discoverable information falling within the ten categories, albeit small in proportion to what has already been provided, is substantial in absolute terms and demands painstaking effort to identify and produce what is required under the law and the Commissions' orders while continuing to protect sources and methods of intelligence gathering.

Some of the motions that will be argued during these sessions deal with other discovery issues; one motion involving discovery is the Defense Motion to Compel Discovery of Documents Captured During the Raid in Which Osama bin Laden Was Killed. AE 409. Other matters on the docket include the Written Privileged Communications Order (the Appellate Exhibit 18 series); allegations by Ramzi Binalshibh that Joint Task Force-Guantanamo personnel have intentionally vibrated his cell (the Appellate Exhibit 152 series); a defense motion to recuse the Military Judge and the current prosecution team (Appellate Exhibit 425); and a defense motion to depose a former CIA interpreter (the Appellate Exhibit 350 series). (I note that a portion of the sessions involving the Appellate Exhibit 350 series may well be closed due to classified information the defense has notified the government and the Commission it seeks to use during argument.) The Commission has also indicated that it will take up defense motions seeking various forms of individual relief for alleged potential health hazards in and around Guantanamo. *See* AE 95; AE 95B; AE 426.

To date, the parties have briefed in writing some 217 substantive motions and have orally argued some 50 motions. Of the 217 motions briefed, 12 have been mooted, dismissed, or withdrawn; 99 have been ruled on by the Judge; and 38 have been submitted for and are pending decision. The Commission has received testimony from 30 witnesses in more than 85 hours of testimony, with all witnesses subject to cross-examination, to assist it in deciding pre-trial motions. The parties have filed 234 exhibits and more than 110 declarations alleging facts and providing references to inform the Judge's consideration of these issues. The government has provided more than 330,000 pages of discovery to the defense. This information, while

never meant to imply that justice can be distilled into numbers, nonetheless reflects methodical and deliberate movement towards trial.

### **Developments in *United States v. Abd al Hadi al-Iraqi***

Last week the Military Commission convened to try the charges against Abd al Hadi al-Iraqi held its eighth series of pre-trial sessions without panel members present. Abd al Hadi is charged with committing serious violations of the law of war by conspiring with and leading others, as a senior member of al Qaeda, in a series of unlawful attacks and other offenses in Afghanistan, Pakistan, and elsewhere from 2001 to 2006. These attacks allegedly caused death and injury to U.S. and coalition servicemembers and civilians and caused damage to or destruction of property.

Recent pre-trial pleadings have addressed the timeline for future litigation milestones, in accordance with the Military Judge's order at Appellate Exhibit 15R. Last week's proceedings addressed three matters. The Military Judge heard argument related to Appellate Exhibit 20U, a Defense motion to withdraw, without prejudice, an earlier defense motion challenging Abd al Hadi's status as an alien unprivileged enemy belligerent; Appellate Exhibit 56A, a Defense Motion for Appropriate Relief, seeking a continuance; and Appellate Exhibit 58, a Defense Motion for Appropriate Relief, requesting that the Military Judge reverse his prior ruling regarding the attribution of delay for purposes of the speedy trial requirement of Rule for Military Commissions 707. AE 56B (Amended Docketing Order). Following argument, the Military Judge took these matters under advisement.

The Military Judge has set the next hearing dates for 19-23 September 2016. The Scheduling Order for those hearings is Appellate Exhibit 15M.

### **Developments in *United States v. Al Nashiri***

For several months the *United States v. Al Nashiri* proceedings were stayed as the government sought re-nomination and re-confirmation of the military judges as judges on the United States Court of Military Commission Review ("U.S.C.M.C.R."), our first reviewing court. That process began in September 2015 and was completed in April 2016, and the U.S.C.M.C.R. lifted the stay in the two interlocutory appeals. The government had previously filed two interlocutory appeals in the U.S.C.M.C.R. on grounds that the military trial judge in the *Al Nashiri* case had, under the statute authorizing such appeals, "terminated proceedings of the military commission with respect to [certain] charges" and "excluded evidence that is substantial proof of a fact material in the proceeding." 10 U.S.C. § 950d. Meanwhile, the Military Commission abated future commission sessions pending resolution of these appeals by the U.S.C.M.C.R. AE 340J.

In May 2016, Al Nashiri petitioned the D.C. Circuit for a writ of mandamus and prohibition to compel the military judges' disqualification and moved the D.C. Circuit to again stay the proceedings in the U.S.C.M.C.R., arguing that the judges' recent reappointment was improper. On 28 May 2016, the D.C. Circuit denied the writ petition and dismissed the motion to stay as moot. This means that the proceedings in the U.S.C.M.C.R. were cleared to resume.

The U.S.C.M.C.R. has now resolved both interlocutory appeals. For the first interlocutory appeal, the Court issued its written opinion on 9 June 2016. The Court reversed the prior ruling by the Military Commission and reinstated the charges relating to the bombing attack on MV *Limburg*. On 8 July 2016, the U.S.C.M.C.R. issued its opinion in the second interlocutory appeal. The Court again reversed the Commission's ruling. The Court concluded that the Commission erred in excluding evidence foreign-national civilians not on board the USS COLE were injured or endangered because of their proximity to the explosion that damaged the ship on 12 October 2000.

With the U.S.C.M.C.R. having resolved both interlocutory appeals, the government moved the Commission to resume all proceedings. AE 340K. Although the Commission has not yet ruled on the motion, the Commission scheduled another series of pre-trial sessions for 7-9 September 2016. AE 349.

In the meantime, the government continues its comprehensive review process to comply with the Commission's 24 June 2014 Order establishing the ten-category construct for discovery. AE 120AA. To date, the prosecution has substantially responded to the Order with respect to all ten categories and continues to review other, potentially discoverable information. For eight of the ten categories, the Commission has approved requests for substitutions and other relief under the Military Commissions Act to prevent damage to national security. AE 120HHHHH. Other requests remain pending with the Commission.

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We thank the Soldiers, Sailors, Airmen, Marines, Coast Guardsmen, and government civilians of Joint Base Andrews, Joint Task Force Guantanamo, and Naval Station Guantanamo Bay for their continuing support to these proceedings in the coming weeks.