

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

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI</p>	<p>AE 027 RULING</p> <p>Ruling on Defense Motion to Bar JTF-GTMO from Interfering with the Accused's Right to Receive Confidential Legal Mail and Access to Courts</p> <p>10 February 2012</p>
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1. The Commission has considered the written and oral submissions of the parties, the testimony of the Commander, Joint Task Force Guantanamo (JTF-GTMO), and the US District Court Orders, dated 11 September 2008 and 9 January 2009.
2. The Commission makes the following findings:
 - a. The Commander, Joint Task Force Guantanamo (JTF-GTMO), is responsible for maintaining safety and security with JTF-GTMO detention facilities. Except as specified in the attached order, JTF-GTMO will implement the appropriate logistical mechanisms, e.g., place of delivery of mail, timing of delivery, to ensure compliance with the attached order.
 - b. The Commission is not in the business of maintaining a detention facility and will generally defer decisions relating to executing responsibility for the facility to the Commander. However, the Commission is responsible to ensure appropriate legal protections for the accused in this case.
 - c. The decision by the Commander to institute new policies concerning the accused's mail from counsel constitutes grounds for the Commission to intervene in this matter.
 - d. This case has been referred with a detailed Military Judge. Each individual case must be decided on its own merits. As such, this ruling only applies to this case based on the evidence presented to this Military Judge.
 - e. All defense counsel have a Top Secret-Sensitive Compartmental Information clearance. As such, defense counsel has a statutory and ethical responsibility not to improperly disclosed classified information. This responsibility covers both written and verbal communication with the accused.

f. The attached order defines "contraband" material that may not be given to the detainee. Defense counsel understand that they have a responsibility not to provide contraband to the detainee except in narrow circumstances discussed in the order.

g. Defense counsel's verbal communication with the accused in the detention facility is not monitored or screened by JTF-GTMO. In essence, JTF-GTMO must trust the defense counsel not to violate their non-disclosure responsibilities when discussing the case with the accused. The Commission finds no reason that similar trust should not be accorded defense counsel in their written communications with the accused.

h. A Privilege Review Team (PRT) is a more appropriate mechanism to serve as the conduit of mail from the defense to the accused. Although contracted by the Department of Defense, the PRT is more independent from JTF-GTMO and members of the prosecution, than would a member of the JTF-GTMO Office of the Staff Judge Advocate (as proposed by the defense to be the reviewing office of the mail).

i. As discussed in the attached order, review of written material by the PRT will be limited to review of appropriate markings and scanning for classification marking. To permit the PRT to review for "plain view" violations of the contraband prohibition could require a further reading of the document potentially violating attorney-client privilege.

j. The government has made no showing why the additional "scanning" procedures are necessary. JTF-GTMO has functioned under the procedures of the habeas order since 2008 with no apparent difficulty. The Commission fails to see why more intrusive procedures are now necessary.

3. The Commission is sensitive to the security concerns of JTF-GTMO and believes the attached order strikes an appropriate balance between those concerns and the necessary protection of privileged communication that is critical to the attorney-client relationship.

4. As stated earlier, the Commission is not in the business of maintaining a detention facility. As conditions change or new information is develop, either side may request a modification of the order.

So ruled this 10th day of February 2012.



JAMES L. POHL
COL, JA, USA
Military Judge