

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

UNITED STATES OF AMERICA

v.

**KHALID SHAIKH MOHAMMAD,
WALID MUHAMMAD SALIH
MUBARAK BIN ‘ATTASH,
RAMZI BIN AL SHIBH,
ALI ABDUL AZIZ ALI,
MUSTAFA AHMED ADAM
AL HAWSAWI**

AE 653F (5th Amend)

***FIFTH AMENDED
SCHEDULING ORDER***

6 July 2020

1. On 7 August 2019, the Commission issued AE 653¹ setting forth the hearing schedule for Calendar Year 2020. That scheduling order has been amended four times.²

2. As noted in this Commission’s Interim Orders in the AE 788/639 Series,³ the world-wide COVID-19 Pandemic (Pandemic) continues and remains fluid. In response to the Pandemic, the Commanders of U.S. Naval Station Guantanamo Bay, Cuba (NSGB) and Joint Task Force, Guantanamo Bay (JTF) have instituted numerous health and welfare-related restrictions (to include quarantine requirements for Commission participants) that make it impracticable for this Commission to hold hearings at the NSGB while these restrictions remain in place.⁴

3. The Commission, therefore, canceled the hearings scheduled to take place in June and July of 2020, and imposed specific reporting requirements on the Government in order to

¹ AE 653 Scheduling Order, dated 7 August 2019.

² See AE 653F Amended Scheduling Order, dated 31 December 2019 and AE 653F (2nd Amend) *Second Amended* Scheduling Order, dated 20 February 2020; AE 653F *Third Amended* Scheduling Order, dated 9 April 2020, and AE 653F *Fourth Amended* Scheduling Order, dated 8 June 2020.

³ See AE 788 (5th Sup)/AE 639HH (4th Sup) *Fifth Supplement to Interim Order, Temporary Extension of Briefing and Litigation Suspense Due to Impacts of Coronavirus COVID-19*, dated 23 June 2020.

⁴ The Commission recognizes the NSGB and JTF Commanders’ obligations to protect the health of the residents of the base and members of the JTF. This ruling is not intended to interfere in any way with their responsibilities in this regard.

provide the Commission with information necessary to make timely decisions as to the viability of the remaining 2020 hearings.⁵

4. In regard to the hearings scheduled for 24 August – 3 September 2020, the Government was directed to provide a written update to the Commission not later than 8 July 2020 as to the status of all travel restrictions and/or health and welfare measures applicable to Commission participants traveling to NSGB.

5. The Commission has since been informed by the Trial Judiciary Staff Director that Office of Military Commissions (OMC) officials responsible for transportation, administration, and logistics have advised that they anticipate the current travel restrictions and/or health and welfare measures currently in effect will remain in effect during the 24 August – 3 September 2020 hearings. These officials further advised that due to current transportation limitations, preparations to meet the existing health and welfare restrictions for the advance party must be made no later than 6 July 2020.⁶

6. Accordingly, the Commission deems it necessary to make a decision as to the viability of the August/September 2020 hearings prior to the submission of the 8 July 2020 Government update and to extend the time for Government reporting requirements to 60 days prior to future scheduled hearings.⁷

⁵ AE 653F (3rd Amend) *Third Amended Scheduling Order*, dated 9 April 2020 and AE 653F (4th Amend) *Fourth Amended Scheduling Order*, dated 8 June 2020.

⁶ See AE 653F (3rd Amend) *Third Amended Scheduling Order* for explanation as to the health and welfare restrictions and requirement for an advance party.

⁷ The Commission also takes notice of the recent ruling in *United States v. Abd al-Rahim Hussein Muhammed Abdu al-Nashiri*, a separate Military Commission Case also scheduled to conduct hearings at NSGB in August and September of 2020. See AE 403Q, AE 420M Ruling, Defense Motion to Continue Hearings Scheduled for 24 August to 3 September 2020 Due to the Novel Coronavirus (COVID-19) Pandemic, dated 1 July 2020. In that ruling, the Commission found good cause to cancel the hearings scheduled for August/September 2020 due to the impact of the Pandemic and the “unduly burdensome logistical requirements associated with a 14-day quarantine.” In reaching its decision, the Commission noted the Government had agreed on 29 June 2020 that the hearings should be cancelled if said quarantine were to remain in effect. *Id.* at 2.

7. The Commission **cancels** the hearings scheduled to take place **24 August – 3 September 2020**. The amended schedule for 2020 is:

- f. 21 September – 2 October 2020;
- g. 19 – 29 October 2020;
- h. 16 – 20 November 2020;
- i. 7 – 16 December 2020.

8. **Order**. The Government is directed to:

a. Immediately notify the Commission in writing of any modification to or lifting of NAVSTA Instruction 6210.0;⁸ and any comparable JTF 14-day imposed quarantine requirements;

b. Coordinate with the OMC officials responsible for travel, logistics, and administration and provide a written update to the Commission as to the status of all travel restrictions and/or health and welfare measures applicable to Commission participants traveling to NSGB **not later than (NLT) 60 calendar days** before the start of each of the remaining 2020 sessions.⁹

So **ORDERED** this 6th day of July, 2020.

//s//
DOUGLAS K. WATKINS
COL, JA, USA
Military Judge

⁸ U.S. Naval Station, Guantanamo Bay, Cuba Instruction 6210.0, "Restriction of Movement (ROM)/Quarantine of 14 Day for All Personnel Entering Naval Station Guantanamo Bay, Cuba," dated 12 April 2020.

⁹ In light of the cancelation of the August/September hearings, the Commission's requirement in AE 653F (4th Amend) *Fourth Amended* for the Government to provide the Commission a status update on 8 July 2020 is **RESCINDED** and the associated reporting requirements are **MODIFIED** as set forth in paragraph 8. Accordingly, the next status update shall be due **NLT 10 August 2020**.