

**MOTIONS HEARING SUMMARY**

The following motions are scheduled for argument during a pre-trial hearing on 19-23 August 2013. The hearing will take place at the US Naval Station, Guantanamo Bay, Cuba:

**SOME THINGS TO WATCH FOR:**

- The Commission will address the Government's motion for trial schedule and Notice of Status of Discovery. (Defense response 175B(MAH) is enclosed herein for your convenience.
- AE 193 Emergency Motion to Compel Appointment of Civilian Learned Counsel chronicles continued unlawful interference and attempt to coerce the Chief Defense Counsel and Mr. al Hawsawi's learned counsel. (Attachment B, to that motion is the Chief Defense Counsel's sworn declaration, note ¶ 21-22). Two related motions are AE 192 and AE 196; AE 192 has not yet cleared the censorship process.
- Motion to dismiss Conspiracy Charge\* in light of recent Federal court rulings in *United States v. Hamdan*, and *United States v. Bahlul*.
- In AE 187, Counsel for Mr. al Hawsawi asks the commissions to address discovery and witness requests that bear directly on pending motions for unlawful interference with the attorney-client relationship. These motions include the production of witnesses that seized attorney client materials such as defense motions lists and summaries.

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\* Recent federal rulings indicate that Conspiracy is not a recognized Law of War Crime. Military Commissions accused may only be charged with recognized war crimes. Admiral Bruce MacDonald refused to dismiss conspiracy charge despite the Chief Prosecutor's recommendation. Conspiracy is a critical charge because one of its important features is that it typically relieves prosecutors of the need to prove the particular roles of alleged conspirators, since each conspirator is liable for all offenses committed in furtherance of the conspiracy by any of the co-conspirators. Accordingly, the conspiracy charge normally allows a very minor participant in a conspiracy to be swept up in the same case as someone who is more responsible for criminal conduct.

<b>Motion Number</b>	<b>Filed By</b>	<b>Pleading</b>	<b>Brief Summary</b>
<b>AE 008</b>	Defense	Defense Motion to Dismiss for Defective Referral	The Defense is seeking dismissal of all charges due to their improper referral by the Convening Authority
<b>AE 013</b>	Prosecution	Government Motion to Protect Against Disclosure of National Security	The Prosecution seeks a protective order restricting transparency of the court
<b>(1) AE 013CC</b>	Defense	Joint Defense Motion to Amend AE013AA Protective Order #1 to Clarify Control over the Courtroom	The Defense seeks to amend Protective Order #1
<b>(2) AE013DD</b>	Defense	Motion of Mr. Mohammad, Mr. al Baluchi and Mr. Hawsawi to Amend AE013AA Protective Order #1 Regarding Prosecution Access to Defense Team Information;	Mr. Mohammad, Mr. al Baluchi, and Mr. Hawsawi seek to amend Protective Order #1
<b>(3) AE013FF</b>	Defense	Motion to Amend AE013AA Protective Order #1 to Clarify “Secure Area” Requirement;	The Defense seeks to amend Protective Order #1
<b>(4) AE013GG</b>	Defense	Mr. al Baluchi’s (Ali Abdul Aziz Ali) Motion to Amend AE013AA Protective Order #1 to Protect Confidential ICRC Materials;	Mr. al Baluchi seeks to amend Protective Order #1
<b>(5) AE013HH</b>	Defense	Motion to Amend AE13AA Protective Order #1 to Clarify Open Source Handling;	The Defense seeks to amend Protective Order #1

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<b>(6) AE013II</b>	Defense	Motion to Amend AE013AA Protective Order #1 to Secure Privileged Classification Review;	The Defense seeks to amend Protective Order #1
<b>(7) AE013JJ</b>	Defense	Motion to Amend AE013AA Protective Order #1 to permit Defendant to Participate in His Own Defense;	The Defense seeks to amend Protective Order #1
<b>(8) AE013KK</b>	Defense	Motion to Amend AE013AA Protective Order #1 to Make Conforming Changes;	The Defense seeks to amend Protective Order #1
<b>(9) AE013MM</b>	Defense	Motion to Compel the Production of Author of OCA Memo on Open Source Handling Requirements;	The Defense Seeks to amend Protective Order #1
<b>AE018</b>	Prosecution	Government Motion for Privileged Written Communications Order/ <b>AE049</b> ; Government's Renewed Motion for Privileged Written Communication	The Prosecution is seeking an order from the judge that would govern how and what communications between the accused and counsel are transferred
<b>AE031</b>	Defense	Joint Defense Motion to Dismiss for Unlawful Influence	The Defense seeks dismissal of all charges due to the unlawful influence exerted by senior administration officials, members of congress, and military leadership

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<b>AE031F/AE032H /AE133EE</b>	Defense	Defense Motion to Compel Discovery in Support of AE031, AE032 and AE 133	The Defense seeks to compel discovery related to the respective motions AE031, AE032, and AE133
<b>AE032</b>	Defense	Joint Defense Motion for Appropriate Relief to Protect Right to Counsel by Barring Invasion of Privileged Attorney-Client Communication	The Defense seeks an end to monitoring and censorship of attorney-client communications
<b>AE048</b>	Defense	Defense Motion to Compel Witnesses in Support of Joint Defense Motion to Dismiss due to Defective Referral (witness testimony)	The Defense seeks witness testimony on the improper referral of charges to the Convening Authority
<b>AE049</b>	Prosecution	Government's Renewed Motion for Privileged Written Communication	Relevant to AE018, the Prosecution seeks an order that would govern how and what communications between the accused and counsel are transferred
<b>AE051</b>	Prosecution	Government's Consolidated Ex Parte Notice	Classified Motion
<b>AE052</b>	Prosecution	Government's Consolidated Notice Regarding <i>Ex Parte</i> , <i>In Camera</i> Filing and Motion for Finding	Classified Motion

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<b>AE073</b>	Prosecution	Government's <i>Ex Parte, In Camera</i> Motion and Memorandum for a Protective Order Pursuant to M.C.A., 10 U.S.C. 949p-4, and M.C.R.E. 505;	The prosecution seeks a protective order restricting defense access to information
<b>AE079</b>	Defense	Motion of Mr. Mohammad, Mr. bin 'Attash, Mr. bin al Shibh, and Mr. al Baluchi to Defer Consideration of AE052	The Defense seeks to defer consideration of AE052 until a later hearing date
<b>AE080</b>	Defense	Joint Defense Motion to Preserve Evidence of Any Existing Detention Facility	The Defense is asking that the government be ordered to preserve any detention facility where the accused may have been imprisoned since their capture
<b>AE091</b>	Defense	Motion to Dismiss Because the Military Commissions Act Unconstitutionally Requires the Convening Authority to Act as Both Prosecutor and Judge of the Defendants	The Defense seeks dismissal of all charges because the Convening Authority is set up as both the judge and prosecutor
<b>AE104</b>	Defense	Motion to Dismiss the Charges Because the Military Commissions Act of 2009 Exceeds Congress' Power Under the Define and Punish Clause	The Defense seeks dismissal of all charges since the Military Commissions Act of 2009 exceeds Congressional limits stipulated in the Define and Punish Clause to regulate customary international law

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<b>AE105</b>	Defense	Defense Motion to Dismiss Because the Convening Authority Assumes the Responsibilities of an Officer of the Government Without Minimal Procedures Required by the Appointments Clause to Ensure Democratic Accountability	The Defense requests all charges be dismissed since the Convening Authority was not properly appointed using constitutional procedures
<b>AE106</b>	Defense	Motion to Dismiss the Charges Because the Military Commissions Act of 2009 Violates the Due Process Clause	The Defense contends that the Military Commissions Act of 2009 violates the Due Process Clause by setting up a separate justice system for aliens
<b>AE107</b>	Defense	Defense Motion to Dismiss for Lack of Jurisdiction	The Defense seeks dismissal of charges following the Hamdan II in October 2012
<b>AE108C</b>	Defense	Defense Motion to Compel Discovery in Support of Defense Motion for Appropriate Relief to Compel Defense Examination of Accused's Conditions of Confinement	The Defense requests discovery be provided relevant to the conditions of confinement for the accused
<b>AE114</b>	Defense	Motion to Compel Discovery of Information Related to Buildings in Which the Accused or a Potential Witness Has Been Confined	The Defense seeks the production of documents and information relating to any building(s) in which the accused or a potential witness have been confined. If the request is not granted, then the Defense asks that the proceedings be abated

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<b>AE114F</b>	Defense	Defense Motion to Compel Government to Grant Access to Buildings and Locations in Which the Defendants May Have Been Confined	The Defense seeks the production of documents and information relating to any buildings and locations in which the accused or potential witnesses have been confined. If the request is not granted, then the Defense asks that the proceedings be abated
<b>AE133</b>	Defense	Defense Motion to Remove Sustained Barrier to Attorney-Client Communication and Prohibit Any Electronic Monitoring and Recording of Attorney-Communication in any Location	The Defense seeks to abate proceedings until all censoring and monitoring of attorney-client communication is prohibited
<b>AE156</b>	Prosecution	Government's <i>Ex Parte, In Camera</i> Motion and Memorandum for a Second Protective Order Pursuant to M.C.A., 10 U.S.C. 949p-4, and M.C.R.E. 505;	The Prosecution requests an additional protective order to further restrict Defense counsel access to case relevant materials
<b>AE161</b>	Defense	Defense Motion to Require the Government to Comply with M.C.R.E. 506 Regarding Redaction of Unclassified Discovery	The Defense asks that the Military Judge require the Prosecution to produce unredacted unclassified discovery
<b>AE175</b>	Prosecution	Government Motion For a Trial Scheduling Order and Notice of Status of Discovery	The Prosecution requests a trial date be established

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<b>AE193</b>	Defense	Emergency Defense Motion to Compel Appointment of Military Defense Learned Counsel as Civilian Learned Defense Counsel	The Defense seeks appointment of Military Defense Learned Counsel as Civilian Learned Defense Counsel to ensure rapid and uninterrupted representation by a death penalty qualified Defense team
<b>AE196</b>	Defense	Motion to Disqualify the Chief of Operations, Office of Military Commissions, Due to Unlawful Interference with the Professional Judgment of the Chief Defense Counsel and Detailed Learned Military Counsel	The Defense seeks the dismissal of the Chief of Operations, Office of Military Commissions for exerting unlawful influence and blatantly interfering with the professional judgement of the Chief Defense Counsel and Detailed Learned Military Counsel