

UNITED STATES OF AMERICA

v.

SALIM AHMED HAMDAN

**ORDER FOR EXAMINATION
UNDER RMC 706**

15 May 2008

As provided in R.M.C. 706, this Commission finds reason to believe that the accused may lack capacity to understand the nature of the proceedings and to conduct or cooperate intelligently in the defense.

The reasons for this uncertainty about the accused's mental capacity are contained in a declaration filed by Dr. Emily Keram, a board certified forensic psychiatrist with broad experience in forensic mental health issues, who is assisting the Defense. She has spent nearly 100 hours examining and evaluating Mr. Hamdan and has submitted a Declaration explaining her reasons for believing that the accused may not be competent to participate in the trial or assist in his defense. These include a review of his history at Guantanamo Bay, a recitation of several encounters with medical and investigative personnel in 2002 and 2003, and the results of her last meeting with him in February of 2008. Regarding that meeting, she describes

"My last meeting with Mr. Hamdan took place in February 2008. At that time Mr. Hamdan's symptoms of post-traumatic stress disorder included nightmares and intrusive thoughts, memories and images, amnesia for details of traumatic events, lack of future orientation, anxiety, irritability, insomnia, poor concentration and memory, exaggerated startle response, and hyper-vigilance." She described symptoms of Major Depression and indicated that, for the first time he "endorsed the presence of episodic suicidal ideation." He reports thinking his defense team may be interrogators, and reports difficulty remembering, understanding and processing information about his case. After learning of his "boycott" of the proceedings on 28-29 April, and his instructions to his attorneys not to continue to speak for him during his absence, she opined that the symptoms she observed in February of 2008 may have worsened since that time. She was made aware of a prolonged exchange between Mr. Hamdan and the Military Judge on the record on 29 April, in which he was articulate, witty, thoughtful, apologetic, logical and displayed a sharp and remarkable sense of humor about the proceedings, including a well-developed understanding about the history of his case. She opined that his mental state is "severely exacerbated" by the conditions of his "isolative confinement," and outlines her reasons for considering that Mr. Hamdan may not be competent to participate in the proceedings.

The Government has submitted the affidavit of Captain (Dr.) Bruce C. Menely, MC US Navy, an Emergency Medicine physician and the Senior Medical Officer assigned to Joint Task Force Guantanamo Bay, in which he declared, based on his examination of the accused's medical records, that a member of the mental health staff examined the accused on 5 February 2008. He described the result in these terms:

"On 5 February 2008 I was informed that Detainee Hamdan may be suffering from a

Psychiatric condition. I was informed that a psychiatrist hired by the defense had evaluated Detainee Hamdan and felt he had signs of PTSD/depression and that he may be at risk of harming himself. Later that day, the Detainee was evaluated by our staff with an interpreter. According to the medical records, the Detainee stated he did not have any mental health conditions and was surprised that the staff had asked to evaluate him. He asked if staff had the correct detainee and staff confirmed that they had the correct ISN Number. Detainee Hamdan denied any problems with sleep, appetite or any thoughts of self-harm. He stated that his mood had been "pretty good" but reported at times he had sadness related to being confined. He reported that he has learned to cope adequately with the stress of confinement. At this point he stated that he did not wish to speak to staff any more and asked staff to address all future questions to his attorney. Collateral information from the guards did not reveal any concerns about his mental health. They stated that he recreates regularly, speaks frequently to other detainees near his cell, eats and sleeps well, and his affect is positive, frequently smiling, showing no signs of depression.

Detainee Hamdan's hygiene was good. His speech had a regular rate and rhythm and was completely coherent. He made good eye contact and was cooperative and pleasant. His mood was described as "ok." His affect had a full range and appropriate to content. Thought processes were linear, logical and goal-directed. There was no evidence of paranoia, or delusions, or ruminations. He denied auditory or visual hallucinations and did not appear to be inappropriately responding to external/internal stimuli. He denied suicidal ideation, plan or intent. His memory appeared intact for remote and recent events. There were no cognitive deficits observed from the interview."

The sharp contrast between these opinions, each rendered by a mental health professional on the same patient within days of each other, leave the Commission uncertain about the actual state of the accused's mental health.

ORDER

IT IS HEREBY ORDERED:

1. THAT the accused be examined by a Medical Board consisting of one or more physicians or clinical psychologists, at least one of whom should be a psychiatrist or a clinical psychologist, as provided by Rule for Military Commissions 706, Manual for Military Commissions, 2007. The report shall be completed and forwarded to the military judge and defense counsel **not later than 22 May 2008** unless the military judge grants a request for an extension based upon good cause shown. To facilitate such examination, this order includes an order that all existing medical or mental health records currently maintained by any individual or institution be released to the Medical Board for review. In addition, the Commission directs that the board be provided with the following documents:

a. Declaration of Dr. Emily Keram, dated 14 May 2008, and attached to D-041 Defense Motion for RMC 909 Competency Hearing dated 14 May 2008;

b. Declaration of Dr. Emily Keram attached to D-019 Defense Motion for Relief from Punitive Conditions of Confinement, dated 1 February 2008.

c. Declaration of Captain (Dr.) Bruce Menely, U.S. Navy, dated 14 May 2008 and attached to the Government Response to D-041 Motion for RMC 909 Competency Hearing.

2. THAT, the report of the board shall be prepared in two parts:

A. PART ONE shall contain only the ultimate conclusions of the board as to the following questions:

(1) Does the accused have sufficient mental capacity to understand the nature of the proceedings and to conduct or cooperate intelligently in the defense?

(2) Does the accused currently have a mental or personality disorder?

(3) Does the accused need any immediate psychological or medical treatment?

(4) If the answer to question (1) above is "no," would a change in the conditions of the accused's confinement (including more recreation, and transfer to a less 'isolative' facility) improve his condition such that the answer to question (1) above would be "yes"?

PART ONE of the report shall be provided to the military judge, the Commander, Joint Task Force Guantanamo Bay, the convening authority, the trial counsel, and the defense counsel.

B. PART TWO shall contain the full report of the Board.

(1) This part may be released by the Board or other medical personnel only to other medical personnel for medical purposes, unless otherwise authorized by the military judge, except that a copy of PART TWO of the report shall be furnished to the defense counsel and, upon request, to the Commander, Joint Task Force Guantanamo Bay.

(2) Neither the contents of PART TWO nor any matter considered by the Board during its investigation shall be released by the Board or other medical personnel to any person not authorized to receive the full report, except pursuant to court order by the military judge.

3. THAT, the following safeguards shall be adhered to in the conduct and report of the examination:

A. No person, other than the defense counsel, the accused, or the military judge, shall disclose to the trial counsel the contents of PART TWO of the full Report of the Board, any statement made by the accused to the Board, or any evidence derived from that statement.

B. No expert testimony as to any issue that is the subject of the examination ordered herein may be presented by the defense unless and until the accused has submitted to the examination ordered herein.

4. THAT, the examination ordered herein shall be conducted in an expeditious manner consistent with thoroughness, and shall include consideration of any matters raised by the evidence presented by trial counsel, defense counsel, or the accused.

5. THAT, the trial counsel shall ensure that a copy of this Order is provided to the Commander, Joint Task Force Guantanamo Bay, the Convening Authority, the detailed defense counsel, and the Board. Trial Counsel shall also ensure that the three Declarations described in paragraph 1 (a-c) above are delivered promptly to the Board.

So Ordered this 15th day of May, 2008



Keith D. Alfred
Captain, JAGC, USN
Military Judge