

**Military Commissions:
Sentencing Hearing, ISN 10020 Majid Khan (Khan)
October 28–29, 2021**

Events:

Though general instructions were given to the court prior to the day's session, the judge officially called the court to order at 9:15 a.m. on October 28, 2021. Proceedings began with a summary of an 802 (preliminary) closed meeting that had settled the admissibility of witness statements and the provision of nine defense exhibits to the sentencing panel, along with a transcript of Khan's unsworn statement. The judge then addressed instruction modification suggestions to the sentencing directions and worksheets and took final requests for voir dire questions to be asked of the members of the panel pool.

Selection of the sentencing panel members began with a group voir dire of the panel pool. After the judge returned the panel pool to the waiting area, the government and the defense called members 2, 3, 4, 6, 7, 8, 10, 11, 13, 14, 18, 19, and 20 for individual follow-up voir dire. The defense and government ultimately asked the judge to dismiss four panel candidates. The judge composed the sentencing panel of members numbered 1, 4, 5, 7, 8, 9, 11, and 12.

At 4:50 p.m., the judge informed the sentencing panel that Khan had pled guilty, so the trial was moving to the sentencing phase. The government read the stipulation of fact and provided copies to the panel members. At 7:30 p.m. Khan read his unsworn statement to the panel. The statement contained a discussion of his childhood, young adulthood, family, losses, radicalization, capture, interrogation, detention, current attitudes, and apologies to people he had harmed, especially his family. The judge dismissed the panel and recessed the court at 10:00 p.m.

On October 29, 2021, the judge called the court to order at 9:45 a.m. The first portion of the session was devoted to arguments about the admissibility of a government rebuttal to Khan's unsworn statement. The defense argued that the government had not supplied the rebuttal in a timely manner, and the government stated that Khan had gone off script in his unsworn statement. The judge asked if any changes had been made that were prompted by Khan going off script, and the government responded that no changes had been made. The judge ruled that, in not providing the defense the rebuttal in time for a modification to the unsworn statement, the government had not violated the rules of the court, but had indulged in gamesmanship, so the rebuttal was not permitted to be read.

At 11:00 a.m. the judge asked for objections to the written sentencing instructions, the stipulation of fact instructions, and the clemency instructions. Aside from an adjustment to the duration of detention, there were no objections from either the government or the defense. At 11:40 a.m., the judge summoned the sentencing panel members and provided the sentencing, stipulation of fact, and sentencing instructions. The government addressed the members to discuss potential sentences and why it was requesting a sentence in the 25–40-year range. The defense discussed Khan's merits and why it was requesting a maximum sentence of 25 years and a written clemency recommendation.

At 3:00 p.m., while the sentencing panel members deliberated, the judge worked with the government, the defense, and Khan to ensure their understanding of post-trial and appellate rights, including under what circumstances the appeals had been waived. At approximately 4:00 p.m., the panel members concluded their deliberations and announced their recommendation to the court. The panel issued a sentencing recommendation of 26 years and tendered a clemency recommendation to the convening authority.

After dismissing the panel members, the judge reviewed the pretrial agreement on sentencing. The pretrial agreement indicated that, while there would be no credit for time served under law-of-war detention, the detainee was to have one year of credit from his sentence. In addition, the convening authority could approve no more than 14 years of sentenced incarceration. If Khan had performed according to expectations and fully cooperated in all details of his pre-trial agreement, the convening authority would approve no more than 11 years of sentenced incarceration. The judge also noted that Khan had served nine years of non-law-of-war detention, which would be credited as time served.

At 4:40 p.m., the judge thanked all personnel involved in the trial for their professionalism and adjourned court.

Observations:

Khan attended both days of his sentencing hearings in a suit and tie, often appearing sleepy. He made his unsworn statement in English without the need for a translator.¹ In the unsworn statement, Khan noted that.

- He had been born in Saudi Arabia and raised in Pakistan.
- He had spent his teen years in the U.S., wanting to fit in with U.S. society, and that his sisters had gone to college, but he and his brothers had gone to work to provide for the family.
- He had received database administration training through a program at his mosque and found a well-paying job in Rosslyn.
- His finances had been stressed because he was using part of his \$80,000 per year pay to repay debts that his father had incurred, as well as his own housing and taxes.
- When his mother died of hepatitis B, he spiraled into grief. This was compounded when the 9/11 attacks made it feel like “the universe was kicking me in the teeth by making me question my faith.”
- He joined an evangelical mosque that informed him that the temptations in the west made it impossible to practice good Islam, so he went to Pakistan to live with his cousins.
- His cousin's connections with Al Qa'eda and the memories he had of stories glorifying jihadist fights against Russia in Afghanistan led to his vulnerability to recruitment through GTMO propaganda videos.
- When he was back in the U.S. for a visit, his father confiscated his passport so that he would not go back to Pakistan and get involved in terrorism. He lied to his father to get his passport back, then returned to the Middle East.
- He was captured in 2003 and claimed not to have resisted capture or interrogation by foreign governments and then by the U.S.
- He stated that he cooperated fully with interrogations and detailed what he considered torture from May to September in 2003, as well as doctors evaluating and counteracting his hunger strikes until 2006, when he was transferred from CIA custody to GTMO.
- On arriving at GTMO, he hoped for a “lawyer to fight this injustice.”
- In October of 2006, the ICRC provided a photograph of his daughter, but the guard staff did not allow him to keep the photo.
- In GTMO, he educated himself in college, cooking, and languages and concluded that he “had to make things right. [...] Man up and take responsibility”

¹ In the military commission, giving an unsworn statement means that the accused may not be examined or cross-examined about its contents, that the accused does not have to attest that the statement is true, and that any penalty of perjury goes more to the determination of sentence than to a separate legal procedure.

- He indicated pride in his accomplishments and hopes to support his family given his education.
- He several times apologized to those he had hurt and went on to apologize in detail to his wife, his daughter, his father, his siblings, and his nieces and nephews.

Khan's unsworn statement relied heavily on trying to explain how he became involved with terrorism and the heavy cost it had to him personally, further providing lots of details about times and actions he considered torturous. He also emphasized the lack of involvement that his family had in his decisions, their blamelessness, and the fact that he had done them harm through his actions. His statement did not directly address the tragic results of his choices and their impact on people not related to him. Though he twice apologized to those he had hurt, this was quickly followed by him directly naming his family members, making remorse for his actions and apologies to his victims unclear.

The government team severely misstepped in the handling of its rebuttal to Khan's unsworn statement. The defense team had provided the statement and all exhibits to the government well ahead of time, but the government insisted on retaining its rebuttal until after the detainee made his statement. The judge saw this as having been unnecessary gamesmanship and possibly a breach of faith. As a result, the judge denied both the admittance and reading of the government's rebuttal. The rebuttal has been sealed in the record, leaving the government with only its closing argument to counteract any damage the unsworn statement may have done to its case.

Sentencing panel members were not informed of the contents of the pre-trial agreement, and the pre-trial agreement limited the parameters of sentencing so tightly that the sentencing panel portion of the sentencing hearings appeared to function as a mere formality – or a means for the defense to make a clemency recommendation. This portion of the sentencing hearing may have been performed to set precedent for sentencing hearings without pretrial agreements in future military commissions.

Sentence Completion Conclusions:

Multiple non-governmental organizations and law enforcement organizations sent observers to attend the Khan sentencing hearing. The group's consensus was that Khan would conclude his sentence as early as February 2022 if the convening authority sentenced him to 11 years – or no later than February 2025 if sentenced to 14 years. This was based on the sentencing guidelines crediting Khan for the 9 years he served in non-law-of-war detention and the additional one-year credit applied to his sentence.

There was some concern that the law stipulating that no detainee could settle in the U.S. upon release would be waived given that Khan's entire core family resides on the East Coast of the United States and that as an adult, he lived in the U.S. However, as of March 2022, ISN 10020 Majid Khan has been moved into "awaiting transfer" status. This indicates that he was sentenced to 11 years (the minimum sentence) because he had adequately cooperated with the U.S. It also indicates that he will not be allowed to settle in the U.S. and will instead be negotiated for transfer to a third country along with detainees who have completed the Periodic Review Board process. The nations indicating most willingness to accept transferred detainees at this time are Oman and Saudi Arabia, but neither have yet indicated acceptance of Khan.

Panel Selection Interviews:

Question	Response
Judge: Does anyone know 10020 Khan?	All Members: No.

Question	Response
Judge: Does anyone know members of the court?	All Members: No.
Judge: Does anyone feel that he or she cannot give 10020 a fair trial?	All Members: No.
Judge: Does anyone know the facts of the case?	All Members: No.
Judge: Has anyone seen, heard, or read of 10020?	All Members: No.
Judge: Has anyone seen, heard, or read of the military commissions?	All Members: No.
Judge: Has anyone accessed mc.mil?	All Members: No.
Judge: Does anyone have friends or family involved in the case?	All Members: No.
Judge: Does anyone have friends or family who are/were victims of similar cases?	Member 2: Yes. All Other Members: No.
Judge: Has anyone had prior involvement in courts martial?	Members 5, 7, and 10-19 had not been part of courts martial.
Judge: Were those with prior involvement in courts martial, were they similar subject matter cases?	Experienced Members: No.
Judge: Does anyone have specialized law training?	All Members: No.
Judge: Does anyone have specialized law enforcement training?	All Members: No.
Judge: Does anyone have specialized intelligence training?	All Members: No.
Judge: Is anyone in the court chain of command?	All Members: No.
Judge: Does anyone have any reason so suspect he or she could not provide fairness?	All Members: No.
Judge: Is anyone compelled to vote for a particular punishment?	All Members: No.
Judge: Can everyone comply with the given instructions on how to consider appropriateness of punishment?	All Members: Yes.
Judge: Can everyone keep an open mind?	All Members: Yes.
Judge: Can each person come to his or her own decision?	All Members: Yes.
Judge: Is anyone aware of anything that would raise significant question?	All Members: No.
Gov.: Have you formed an opinion on CIA renditions?	Member 2: Yes.

Question	Response
Gov.: Should the U.S. uphold non-rendition values?	Member 2: Yes.
Gov.: Have you read the books and/or seen the movies about the renditions? (Examples provided.)	Member 2: Yes
Gov.: What is your opinion on enhanced interrogation techniques?	Member 2: They are unproductive and may damage the nation.
Gov.: Are you able to be fair and impartial?	Member 2: Yes.
Gov.: Do you know about military commissions?	Member 2: A little.
Gov.: What is your opinion on military commissions versus civilian courts?	Member 2: Prefers civilian courts because they would not be an enemy talking point.
Gov.: Are military commissions illegal or wrong?	Member 2: Not illegal, but counterproductive.
Def.: Will your opinion of counterproductivity impede your impartiality?	Member 2: No.
Def.: Will your opinion of civilian courts impede your impartiality?	Member 2: No.
Def.: Will your experience with the Pentagon attacks impede your impartiality?	Member 2: No.
Def.: Will your reading about GTMO impede your impartiality?	Member 2: No.
Def.: Will your knowledge of the JW Marriot attack impede your impartiality?	Member 2: No.
Def.: Will your reading on GTMO and EITs impede impartiality?	Member 2: No.
Judge: What happened at the Pentagon?	Member 2: A mentor and a family friend died in the Pentagon attack.
Judge: Will you be able to put aside your personal feelings?	Member 2: Yes.
Gov.: How did you volunteer for this duty?	Member 3: A form asked for volunteers, and he put his name down.
Gov.: How long ago was the form sent, and from whom?	Member 3: About a year ago, and it was not from the chain of command.
Gov.: What do you know about GTMO?	Member 3: Had read open-source news both for and against GTMO.
Gov.: Do you have any familiarity with the military commissions?	Member 3: No.
Gov.: Do you have an opinion on military commissions vs. civilian courts?	Member 3: No.
Gov.: Do you have any opinion of detainees at	Member 3: No.

Question	Response
GTMO?	
Def.: Why did you volunteer?	Member 3: There are always requests for help with courts martial.
Def.: Is this normal in the Air Force?	Member 3: Yes.
Def.: Is there any personal reason for your volunteering?	Member 3: No.
Def.: Have you developed any opinions for or against the defendants or the government?	Member 3: No.
Gov.: What is your opinion about EITs (waterboarding)?	Member 4: Opinion of EITs is based on the movie "0Dark30." Certain EITs fit certain situations, but others don't.
Gov.: Given your opinion, are you a good fit for the panel?	Member 4: Yes. Hollywood does glamour, so he didn't take it at face value.
Gov.: Are you familiar with military commissions?	Member 4: No.
Gov.: Are the military commissions unfair?	Member 4: No.
Gov.: What is your opinion of military commissions vs. civilian courts?	Member 4: The military commissions fit the situation.
Gov.: Is it unfair to detain these men?	Member 4: No.
Def.: Do you remember the opening scenes of "0Dark30?"	Member 4: Very vaguely.
Def.: What were you feeling during those scenes?	Member 4: Shock, but also awareness that Hollywood's intention was to shock.
Def.: Will your feelings impede your impartiality?	Member 4: No.
Def.: Were you in Japan during the J.W. Marriott bombing?	Member 4: Yes.
Def.: Do you have memories of it?	Member 4: No.
Def.: Was it impactful to you?	Member 4: No.
Def.: Will your opinion of EIT impact your impartiality?	Member 4: No.
Gov.: What is your opinion of the military commissions, and what did you mean in a survey response that you hoped a perpetrator had "less likelihood to get off scot-free?"	Member 6: Prior experience with courts martial had led to frustration, because it seemed like the prosecutor could not present information fully, and it ultimately felt like a perpetrator was released without consequences on a technicality. Hopefully, the military commissions will not be a similar experience, maybe because the personnel are more senior.
Gov.: Despite your frustration, did you follow the	Member 6: Yes.

Question	Response
law?	
Gov.: Were you impartial?	Member 6: Yes
Gov.: Did the experience taint your perception of military justice?	Member 6: No.
Gov.: Are you able to be impartial in this military commission?	Member 6: Yes.
Gov.: You have opinions on Islam that might impede your impartiality, due to poor experiences with Muslims?	Member 6: Correct.
Gov.: Can you be fair and impartial in the face of the Islam in the court room?	Member 6: Yes. Different cultures may treat her differently, but that does not mean that she must treat them differently.
Judge: Were you treated differently in the course of your duties?	Member 6: Yes. In the U.S., during mixed courses that she took along with Muslims, she was treated differently.
Judge: Are you willing to believe that not all Muslims agree, as pertains to the treatment of others?	Member 6: Yes.
Judge: Are you able to be impartial?	Member 6: Yes.
Gov.: Please explain the survey comment about not being concerned with impartiality for people choosing to engage in terrorism.	Member 6: In matters where a course of terrorism was chosen, fairness and impartiality contradict each other. In those cases, she needs to set fairness and impartiality aside to follow the law.
Gov.: Can you be impartial?	Member 6: “Yes, I believe so.”
Gov.: Are you familiar with military commissions?	Member 6: No.
Gov.: Do you feel that the detainee should be tried in a civilian court?	Member 6: No, because she is not familiar with the differences between military commissions and civilian courts.
Gov.: Is the military commission unfair?	Member 6: No.
Def.: Is the accused allowed to mount a defense?	Member 6: Yes.
Def.: But not allowed to be cleared on a technicality?	Member 6: Yes.
Def.: Do you assume that Muslims treat you differently?	Member 6: No. There are several cultures that tend to treat women differently.
Def.: Does knowledge that the accused is Southeast Asian, not Middle Eastern, change your opinion of him?	Member 6: Had no predisposed opinions of the detainee, so no.
Def.: In what theatre did your husband fly MQ9s?	Member 6: Primarily Afghanistan, but probably many places.

Question	Response
Gov.: You said you have no opinions on EITs, but that you read articles?	Member 7: Yes. He read articles and thought about them but formed no opinions.
Gov.: Are you able to set aside what you read?	Member 7: Yes.
Gov.: Are you aware of the J.W. Marriott bombing?	Member 7: He heard of it, likely either in training or in the press.
Gov.: Are you familiar with the military commissions?	Member 7: Yes, because he received a package for someone who was trying not to be mobilized for the military commissions.
Gov.: Do you have any concerns over the legitimacy of the military commissions?	Member 7: No.
Gov.: What are your thoughts on trying the detainee in civilian court?	Member 7: No thoughts.
Gov.: Can you be impartial?	Member 7: Yes.
Def.: Did you receive orders from the judge?	Member 7: Yes.
Def.: Did you know not to review open-source materials about the case or the commissions?	Member 7: Not until close to the military commission.
Def.: Do you recall the contents of the Wikipedia page that you read about the accused?	Member 7: No.
Def.: If you were ordered not to research, would you have complied?	Member 7: Yes.
Gov.: You profess a personal faith, and joined the army after 9/11, denouncing Islamic extremism?	Member 10: Yes.
Gov.: And you believe that extermination of Islamic extremists is part of keeping the world safe?	Member 10: Yes, in terms of what has been happening over the past 20 years.
Gov.: Are you still able to be fair and impartial?	Member 10: "I believe I can."
Gov.: Are you 100% confident?	Member 10: "I believe I can."
Gov.: Al Qa'eda was implicated in a landmine injury to your best friend. Who is this best friend?	Member 10: Both Member 10 and his best friend were platoon leaders and they hung out together.
Gov.: Are you able to be impartial if the detainee has Al Qa'eda connections?	Member 10: "I believe so."
Def.: Have you been to GTMO before?	Member 10: Yes.
Def.: Were you involved with detention or the prisoners?	Member 10: No.
Def.: Do you understand that the defense must be able to be zealous defenders?	Member 10: Yes.
Def.: Does the defendant deserve extermination?	Member 10: No.
Def.: Does the defendant deserve punishment to	Member 10: Yes.

Question	Response
the greatest extent?	
Gov.: You indicated on your survey that your opinion on EITs was based on news, but then said that you had no opinion. Please explain.	Member 8: He had misunderstood the question, and simply been admitting to reading news about EITs.
Gov.: Have you been involved in military commissions?	Member 8: No, just in courts martial.
Gov.: Do you have any opinions about whether the detainee should be tried in military commissions vs. civilian courts?	Member 8: No.
Gov.: Do you believe that it is unlawful to detain or try the GTMO detainees?	Member 8: No.
(No questions from the defense.)	
Gov.: Did you perform a Google search on Khan?	Member 11: Yes, prior to receiving the court order not to research.
Gov.: Can you be fair and impartial?	Member 11: Yes.
Def.: Do you remember any of the results from the search?	Member 11: No. He did not click on any of the results after realizing he probably should not.
(No questions from the government.)	
Def.: Have you or any of your friends worked in the intelligence community?	Member 13: Yes. He had known several intelligence community members.
Def.: Do you or your family work in the intelligence community?	Member 13: No.
Def.: You have a friend in the intelligence community?	Member 13: Yes, a friend in high school went to the intelligence community in D.C.
Def.: Will this impede your impartiality?	Member 13: No.
Gov.: You noted you had watched movies or shows about EITs. What was your response to the portrayal?	Member 14: There were no gratuitous scenes depicting illegality or improper application.
Gov.: Will this impede your impartiality?	Member 14: No.
Gov.: What is your opinion about GTMO being important?	Member 14: He wasn't sure what about the president not closing GTMO struck him as important, and he just didn't have the clearance to know.
Gov.: Can you be impartial?	Member 14: Yes.
Gov.: Do you have family in the intelligence community?	Member 14: Yes. Brother is in weaponeering, and sister-in-law is in cybersecurity.
Gov.: Will this impede your impartiality?	Member 14: No.
Gov.: What is your familiarity with the J.W. Marriott bombing?	Member 14: He heard about it on national news, but it had no personal impact.

Question	Response
Gov.: Will you be able to be impartial?	Member 14: Yes.
Gov.: Are you familiar with the military commissions?	Member 14: No.
Def.: Is your retired brother working in the intelligence community?	Member 14: No. The retired brother is currently a househusband in Korea.
Def.: Have you seen open-source information about GTMO?	Member 14: Some.
Def.: Why is GTMO “important?”	Member 14: It continues to exist in response to a novel situation. It must be important, or it would be gone.
Def.: What's your definition of “gratuitous scenes?”	Member 14: Like pornography, “I know it when I see it.” The scenes did not trigger “this should not happen” reactions.
Def.: What about a slam against the wall?	Member 14: Not gratuitous.
Def.: Waterboarding?	Member 14: Grey area, but not gratuitous.
Def.: Are you able to keep an open mind for facts?	Member 14: Yes.
Gov.: You indicated volunteering. Were you volun-told?	Member 18: He was notified of the need by his boss, “I said, 'Good deal.'”
Gov.: Did you desire to serve on a panel?	Member 18: It was a new experience and opportunity. “I'm a finance marine. I like to do new things.”
Judge: Did you volunteer in order to punish the government or the defense?	Member 18: No.
Judge: Are you able to be impartial?	Member 18: Yes.
Gov.: What is your opinion on military commissions?	Member 18: No opinion.
Gov.: Do you know about EITs?	Member 18: He had heard that someone EITd could not be prosecuted.
Gov.: Are you able to follow the judge's instructions?	Member 18: Yes.
Gov.: Can you be impartial?	Member 18: Yes.
Gov.: Is it wrong to detain enemy combatants at GTMO?	Member 18: No.
Gov.: Do you have any knowledge of the J.W. Marriott bombing?	Member 18: He was aware of it but had little knowledge.
Gov.: Can you be impartial?	Member 18: Yes.
(No questions from the defense.)	
Gov.: What is your opinion on EITs?	Member 19: He had read arguments for and

Question	Response
	against EITs but had formed no opinion.
Gov.: Do you have any bias based thereon?	Member 19: No.
Gov: Can you be impartial?	Member 19: Yes.
Gov.: Do you have any familiarity with the military commissions?	Member 19: No.
(No questions from the defense.)	
Gov.: You noted that you had read about GTMO. What articles?	Member 20: Did not remember what he had read, just that he had read.
Gov.: You wrote about an opinion on Islam. Please expand.	Member 20: There can be religious differences, but actions should be tried, not motivations.
Gov.: Can you be impartial?	Member 20: Yes.
Gov.: Are you familiar with the military commissions?	Member 20: No.
Def.: Do you believe that a desire for Muslims to convert to Christianity and having different religious beliefs are compatible with the commissions?	Member 20: Yes. "I'm allowed to hope for that." (Khan appeared to be in support of Member 20's opinion, addressing the court in general about different religious beliefs. He also noted that he "followed Jesus Christ," but that "did not make him Christian.")

In response to interviews, the government made no challenges for cause, and the defense challenged member 3 for the Air Force requesting volunteers, member 6 for bias due to negative reactions to Muslims and courts martial, and member 10 for bias against the accused due to confirming belief in the hardest punishment. The government asserted that member 6 had been adequately rehabilitated in the questioning, but ultimately did not oppose the challenges. The judge excused members 3, 6, and 10.

The government exercised preemptory privilege for dismissing member 2, due to extensive EIT research and the sentencing hearing not being the proper forum for it. The defense had no preemptory challenges. The judge excused member 2.

The judge determined that the members to make up the sentencing panel were members 1, 4, 5, 7, 8, 9, 11, and 12. All alternates were excused.