

**Military Commissions:
Pre-Trial Hearings, ISN 10016 Abd Al Hadi Al Iraqi
6–17 June 2022**

Events:

On 10 June 2022 the government and the defense attempted to enter a pre-trial agreement, pleas, and a stipulation of fact concerning detainee ISN 10016 Abd Al Hadi Al Iraqi, but the judge denied this attempt citing several portions of the pre-trial agreement that were not clearly negotiated and stated.

On 13 June 2022, ISN 10016 Abd Al Hadi Al Iraqi and his defense team acted on AE 217 “Offer for a Pretrial Agreement”¹ and entered AE 215T “Accused's Plea in Accordance with the May 9, 2022, Pre-Trial Agreement”² and AE 217H “Accused's Pleas in Accordance with the 9 May 2022 Pre-Trial Agreement”³ by the expedient of AE 217G “Entry of Pleas as Read by LCDR Meusch.”⁴ ISN 10016

Following are Hadi Al Iraqi’s pleas to the following charges:

NOT GUILTY:

- **CHARGE I: Violation of 10 U.S.C. Section 950t(6), Denying Quarter**, “In that Abd Al Hadi Al Iraqi [...] did, from in or about **2003 to in or about 2004**, at multiple locations in and around Afghanistan and Pakistan, in the context of and associated with hostilities, while in a position of effective command and control over subordinate forces, declare, order, and otherwise indicate to those forces that there shall be no survivors, when it was foreseeable that circumstances would be such that a practicable and reasonable ability to accept surrender would exist, with the intent to conduct hostilities such that there would be no survivors.”
- **CHARGE II: Violation of 10 U.S.C. Section 950t(4), Attacking Protected Property**: “In that Abd Al Hadi Al Iraqi [...] did, on or about **29 September 2003**, at or near Shkin, Afghanistan, in the context of and associated with hostilities, intentionally attack a military medical helicopter, which was protected property under the laws of war as a military medical aircraft bearing the emblem and distinctive sign of the Medical Service of armed forces, to wit: the red cross on a white ground, by firing at said military medical helicopter as it attempted to evacuate a United States military casualty from the battlefield, which protected property was the object of the attack and Abd al Hadi knew and should have known of the factual circumstances that established the military medical helicopter's protected status.”

GUILTY:

- **CHARGE II: Violation of 10 U.S.C. Section 950t(4), Attacking Protected Property**: “In that Abd Al Hadi Al Iraqi [...] did, on or about **29 September 2003**, at or near Shkin, Afghanistan, in the context of and associated with hostilities, intentionally attack a military medical helicopter, which was protected property under the laws of war as a military medical aircraft bearing the emblem and distinctive sign of the Medical Service of armed forces, to wit: the red cross on a white ground, by firing at said military medical helicopter as it attempted to evacuate a United States military casualty from the battlefield, which protected property was the object

1 Filed 10JUN2022. Remained in Security Review as of 15JUL2022. AE 217B “Pretrial Agreement” only filed in Arabic, 10JUN2022, remains in Security Review as of 15JUL2022. AE 217A “Appendix A to the Offer for Pre-Trial Agreement” was filed entirely under seal 10JUN2022.

2 Filed 17JUN2022. Remained in Security Review as of 15JUL2022.

3 Filed 13JUN2022. Remained in Security Review as of 15JUL2022.

4 Filed 10JUN2022. Remained in Security Review as of 15JUL2022.

of the attack and Abd al Hadi should have known of the factual circumstances that established the military medical helicopter's protected status.”

- **CHARGE III Violation of 10 U.S.C. Section 950t(17), Using Treachery of Perfidy:**
 - **Guilty:** “In that Abd Al Hadi Al Iraqi [...] did, on or about **7 June 2003**, at or near Kabul, Afghanistan, in the context of and associated with hostilities, invite the confidence and belief of at least one person that a vehicle appearing to be a civilian vehicle was entitled to protection under the law of war, and, intending to use and betray that confidence and belief, did, thereafter, make use of that confidence and belief to detonate explosives in said vehicle thereby attacking a bus carrying members of the German military, resulting in death and injury to at least one of those German military members.”
 - **Guilty:** “In that Abd Al Hadi Al Iraqi [...] did, on or about **27 January 2004**, at or near Kabul, Afghanistan, in the context of and associated with hostilities, invite the confidence and belief of at least one person that an individual appearing to be a noncombatant civilian was entitled to protection under the law of war, and, intending to use and betray that confidence and belief, did, thereafter, make use of that confidence and belief to detonate explosives concealed beneath said individual's civilian clothing thereby attacking a coalition convoy carrying members of the Canadian military resulting in death and injury to at least one of those Canadian military members.”
 - **Guilty:** “In that Abd Al Hadi Al Iraqi [...] did, on or about **28 January 2004**, at or near Kabul, Afghanistan, in the context of and associated with hostilities, invite the confidence and belief of at least one person that a vehicle appearing to be a civilian vehicle was entitled to protection under the law of war, and, intending to use and betray that confidence and belief, did, thereafter, make use of that confidence and belief to detonate explosives in said vehicle thereby attacking a coalition convoy carrying members of the British and Estonian militaries, resulting in death and injury to at least one of those military members.”

GUILTY:

- **CHARGE IV: Violation of 10 U.S.C. Section 950t(28), Attempted use of Treachery or Perfidy:** “In that Abd Al Hadi Al Iraqi [...] did, on or about **29 March 2004**, at or near Jalalabad, Afghanistan, in the context of and associated with hostilities, with the specific intent to commit the offense of Using Treachery or Perfidy (10 U.S.C. Section 950t(17)), invite the confidence and belief of at least one person that a vehicle appearing to be a civilian vehicle was entitled to protection under the law of war, and, intending to use and betray that confidence and belief, did, thereafter, make use of that confidence and belief to attempt to detonate explosives in said vehicle thereby attacking a convoy carrying United States military members with the intent to kill and injure at least one person.”

NOT GUILTY:

- **CHARGE V: Violation of 10 U.S.C. Section 950t(29), Conspiracy:** “In that Abd Al Hadi Al Iraqi [...] did, from in or about **1996 to on or about 1 November 2006**, at multiple locations in and around Afghanistan, Pakistan, Iraq, Turkey, and elsewhere, in the context of and associated with hostilities, knowingly conspire and agree with Usama Bin Laden, Ayman Al Zawahiri, Mohammed Atef, Khalid Shaikh Mohammad [...], and other individuals, known and unknown, to commit the following substantive offenses triable by military commission: Terrorism; Denying Quarter; Using Treachery or Perfidy; Murder of Protected Persons; Attacking Protected Property; Attacking Civilians; Attacking Civilian Objects; and Employing Poison or Similar Weapons, in order to force the United States, its allies, and non-Muslims out of the

Arabian Peninsula, Afghanistan, and Iraq. Abd Al Hadi, knowing the unlawful objectives and purposes of the agreement, did willfully join said agreement with the intent to further its unlawful objectives and purposes and did, thereafter, knowingly commit one or more of the following overt acts in order to accomplish some objective or purpose of the agreement: The paragraphs numbered 1 through 63 in the section titled “Common Allegations” are hereby re-alleged and incorporated by reference as overt acts as if set forth fully herein.”

GUILTY:

- **CHARGE V: Violation of 10 U.S.C. Section 950t(29), Conspiracy:** “In that Abd Al Hadi Al Iraqi [...] did, from in or about **1996 to on or about 1 November 2006**, at multiple locations in and around Afghanistan, Pakistan, Iraq, Turkey, and elsewhere, in the context of and associated with hostilities, knowingly conspire and agree with Usama Bin Laden, Ayman Al Zawahiri, Mohammed Atef, Khalid Shaikh Mohammad [...], and other individuals, known and unknown, to commit the following substantive offenses triable by military commission: Terrorism; Denying Quarter; Using Treachery or Perfidy; Attacking Protected Property; and Attacking Civilian Objects in order to force the United States and its allies out of Afghanistan, and Iraq. Abd Al Hadi, knowing the unlawful objectives and purposes of the agreement, did willfully join said agreement with the intent to further its unlawful objectives and purposes and did, thereafter, knowingly commit one or more of the following overt acts in order to accomplish some objective or purpose of the agreement: The paragraphs numbered 1 through 63 in the section titled “Common Allegations” are hereby re-alleged and incorporated by reference as overt acts as if set forth fully herein.”

The government then moved to dismiss Charge I without prejudice, and the judge ruled in favor of the government’s motion.

Pre-trial hearings in the Military Commissions for the ISN 10016 Abd Al Hadi Al Iraqi case will continue in August and as scheduled by the judge, but sentencing will not commence until two years from the date of acceptance of the pleadings.

Observations:

The pre-trial agreement and pleas of guilt were largely unexpected by the public, non-government organizations, and the press. The timeline of events by which the pre-trial agreement, stipulation of facts, and pleadings were negotiated and presented, appears to have been orchestrated in such a way as to avoid public or victim notice.

- **9MAY2022** – Convening Authority signed a negotiated pre-trial plea agreement that still needed to have its stipulation of facts negotiated.⁵
- **20MAY2022** – Government and Defense jointly moved to amend the docketing order for 6–17 JUN 2022 and requested that the motion remain under seal.⁶
- **27MAY2022** – Judge Rosenow granted the joint Government-Defense motion that scheduled 6JUN2022 for enacting detailing and withdrawal orders, 7JUN2022 for hearing testimony from the GTMO Chief Medical Officer and Chief Defense Counsel, 8-14JUN2022 for closed sessions, 15JUN2022 for an unspecified open session, 16JUN2022 as a day subject to later scheduling, and 17JUN2022 for hearing updates on medical efforts, a motion to protect at-risk

5 Source: Title of AE 217 I “Accused’s Pleas in Accordance with the May 9, 2022, Pretrial Agreement”

6 Source: AE 215 R “Amendment to Docket Order” dated 27MAY2022.

victims and their family members, and Defense motions to dismiss.⁷ Though the amended docketing order did not mention the plea agreement, later on 10JUN2022 the judge revealed that the unspecified content of 15JUN2022 was intended for the discussion and entry of a plea.⁸

- **[Unknown Date]** – Personnel liaising between the Military Commissions and the NGOs informed at least one NGO that the week of 13-17JUN2022 was likely to be mostly closed, and NGOs would likely be flown back stateside during the week rather than on Saturday (18JUN2022). Few NGOs and members of the press attended on island. Only one member of the press and sporadic NGOs attended at remote facilities.⁹
- **8JUN2022** – Defense informed the Court via e-mail that the lead defense counsel's children had come down with COVID, and she potentially needed to return stateside on Saturday, 11JUN2022 to relieve her immunocompromised spouse. Government and Defense jointly requested that the judge convene an open session on the scheduled closed day, 10JUN2022, to hear the pre-trial agreement and plea. Judge Rosenow expressed concern that the agreement and plea could be adequately clarified, explained, and understood in an abbreviated Friday session, but agreed to receive the signed agreement and stipulation of fact under seal on Friday, if completed.¹⁰
- **9JUN2022** – Defense gave the judge a “read ahead” version of the agreement and stipulation of facts, but not the appendix to the agreement. Defense stated anticipation of finalized agreement and stipulation of fact on 9JUN2022 and proposed a noon beginning for a session on 10JUN2022. On 10JUN2022, the judge noted that prior to the Defense “read ahead,” no-one had provided any indication of the content or prospective content of the pre-trial agreement, nor the content of the negotiated stipulation of fact. A final version of the pre-trial agreement, appendix to the pre-trial agreement, and stipulation of fact was supplied by the Government to the Court at 9:00 PM on 9JUN2022.¹¹
- **10JUN2022** – Judge Rosenow opened the noon hearing that was requested by the Government and the Defense (on a Friday that was originally scheduled for closed hearings), with the stated intent to discuss and rule upon whether the plea agreement could be fully admitted yet. After giving several examples of conflicting and ill-defined language within the agreement and stipulation of fact, the judge determined that the agreement, stipulation of fact, and plea could not be reviewed with all parties involved and admitted with the assurance that the accused and both sets of counsel fully understood them. The lead defense counsel requested an open hearing on Saturday morning to read the pre-trial agreement and plea into the record if the judge ruled not to admit them, in case she had to fly home to her children. The lead defense counsel also argued that any delay would prejudice the arrangements and risked wrecking the pre-trial agreement because it was predicated upon the Department of State starting proceedings to find a third country for transfer of the detainee. This revealed that the pre-trial agreement:
 - Removed all chance of a death penalty (common for plea agreements).
 - Guaranteed release of the detainee for transfer in the near term (possibly limiting any sentence to time served or to time from a back-date plus cooperation concessions, as in the sentencing for ISN 10020 Majid Khan).
 - Potentially arranged for the detainee to serve his sentence in a third country, not under United States supervision or enforcement.

7 Source: AE 215 R “Amendment to Docket Order” dated 27MAY2022.

8 Source: Unofficial/Unauthenticated Transcript for 10JUN2022.

9 Source: Discussion with NGO and Press representatives at Periodic Review Board hearing on 23JUN2022.

10 Source: Unofficial/Unauthenticated Transcript for 10JUN2022.

11 Source: Unofficial/Unauthenticated Transcript for 10JUN2022.

Judge Rosenow ultimately decided that more preparation was necessary, both among the accused, the Defense, and the Government, and within the Court, so that deliberations could proceed with full understanding and with dignity, and he recessed the court until the morning of Monday, 13JUN2022.¹² Despite the judge's ruling, AE 217G “Entry of Pleas as Read by LCDR Meusch” was filed with a date of 10JUN2022.¹³

- **11JUN2022** – Court issued written guidance about concerns in the wording of the pre-trial agreement to the Government and the Defense.¹⁴
- **13JUN2022** – Lead defense counsel remained in attendance, having not flown home to relieve her spouse.
 - Defense counsel read ISN 10016's pleas into the record.
 - Judge noted that the pre-trial agreement specified that it was valid only on the basis that ISN 10016 agreed to plead guilty to Charges II-V as written, but that the pleading as presented specified modifications to Charges II and IV. Judge requested confirmation that the Convening Authority still offered the terms of the pre-trial agreement, given the modifications to the charges.
 - During a short recess, the government had an authorization of the pre-trial agreement in allowance of the defense-directed amendments to the charges.
 - The amendments to the charges:
 - Removed all reference to ISN 10016 intending to injure or kill civilians.
 - Removed all reference to ISN 10016 injuring or killing civilians.
 - Removed all reference to ISN 10016 having a religious motivation for conducting hostilities.
 - Removed all reference to ISN 10016 knowing that a marked helicopter was a medical helicopter when he attacked it, instead allowing him to have been in ignorance but “should have known” it was a medical helicopter.
 - Judge ensured that ISN 10016 understood the legal definitions of the charges, the charges themselves, and the ramifications of pleading guilty to the charges, as well as his recourse for reversing his plea if necessary.
 - Judge ruled that ISN 10016 pled guilty to a modified Charge II, unmodified charges III and IV, and a modified Charge V.
 - Judge stated that he skipped reading several paragraphs of the pre-trial agreement into the record. These paragraphs appear to have contained the actual bargain elements and the relief offered for a pleading of guilt.
 - Judge asked the Government to clarify prior ambiguities surrounding the timing of sentencing set forth in the agreement. Government stated that there would be a two-year delay before sentencing, “that's for the parties to conduct some business and ensure that the effect of the agreement is taking place.”
 - Note: ISN 10016 is allowed to withdraw his pleading any time before sentencing is passed, so this delay is causing the U.S. government to perform its part in granting relief without any guarantee that the detainee will uphold his part of the agreement.

12 Source: Unofficial/Unauthenticated Transcript for 10JUN2022.

13 Source: www.mc.mil on 15JUN2022, concerning AE 217 G “Entry of Pleas as read by LCDR Meusch.”

14 Source: Unofficial/Unauthenticated Transcript (Merged) for 13JUN2022.

- The nature of the “business” was left undefined.
- A driving portion of the recent hearings has been that ISN 10016 Abd Al Hadi Al Iraqi is a very sick man who needs medical treatments that cannot be performed at GTMO; a two-year delay is inconsistent with these arguments, unless the detainee is to be moved to an external location for treatment as part of the agreement.
- Government moved to dismiss Charge I, which accused ISN 10016 of intent to and giving orders to the effect of killing all combatants, even when accepting a surrender would be possible. Judge ruled to allow withdrawal of the charge.
- Judge asked if the pre-trial agreement meant the Government and Defense were waiving further litigation and de novo reconsideration. Defense answered that it would withdraw or waive all motions regarding dismissal of the case, but that other litigation would be addressed on a case-by-case basis.
- Judge ruled that ISN 10016 made all pleas of guilt voluntarily, in truth, and in full understanding of their meanings and the offers in the pre-trial agreement and appendix.

Judge recessed court with the spoken expectation that any further discussion on the subject and litigation on non-waived motions would be taken up on 15AUG2022.¹⁵

The way in which this plea agreement was reached appears to have been an attempt to hide from the public and the victims that:

1. ISN 10016 will no longer be held accountable for any harms he may or may not have caused to civilians, and he is being prepared for transfer to a third country where he will be beyond the recourse of civil suits, with the full agreement of the U.S. government.
2. ISN 10016's sentencing panel will be required to view him not as a potential terrorist, but as an unmarked combatant who simply went about attacking marked combatants the wrong way.
3. ISN 10016's sentencing panel will have an ever-greater proportion of potential members who were either not yet born or who were not old enough to be aware of public events at the time that the detainee was active as an alien belligerent.
4. The U.S. government, and by extension U.S. citizens, will be guaranteeing potentially extensive and irreversible reprieve per the pre-trial agreement, with no requirement that ISN 10016 will keep his part of the agreement.

Taking public opinion into account is not a component part of reaching a judicially viable and ethical verdict in either the United States judicial systems or the military. However, disenfranchising stakeholder victims and moving to conceal that disenfranchisement from them is another thing completely – and in this instance – it points to potential political pressures being brought to bear on non-judicial personnel such as the Convening Authority.

As of 15JUL2022, the only document in the AE 217 series that does not remain in security review or under seal is AE 217 J, which documents the judge's findings. When a document in security review takes more than the mandated 15 days to be posted, it generally means that a third-party agency is interfering with DOD Security Classification/Declassification Review Team's process, or that the authority responsible for posting the document to the www.mc.mil website has delayed publication. The reason for the month-long delay in publication has not been given. The AE 217 series contains the pre-trial agreement, the stipulation of fact, and the rendered pleadings.

15 Source: Unofficial/Unauthenticated Transcript (Merged) for 13JUN2022.