

**Military Commissions:
Pre-Trial Hearings, ISN 10015 Nashiri
12 August 2022**

Current Status:

The government team and the defense team closed out arguments concerning the admissibility of interview statements taken by the FBI from Badawi (2001, 2007), Qosi, Nashiri (2007), and several witnesses from Aden (2000-2001) on 12 August 2022. Testimony from witnesses largely focused on the known identities of the people supplying the information, if the people supplying the information exhibited signs of duress, if interviews given before or after a traumatic event were impacted by competency or lack thereof in known and quantifiable ways, if the interviewers potentially knew of information gained under duress caused future interviews to be the products of duress, and the nature of the surroundings in which the interviews were obtained. The defense's final argument held that Nashiri's early interrogations created a continuing situation of duress that impacted the viability of the 2007 interview, and that even if the interviewing FBI agents had not consulted the products of duress (defense preferred using the word "torture") in creating questions for interviews, the fact of the duress occurring tainted all interviews that the FBI gathered since no means existed to prove that sourcing was entirely untainted. The government's final argument pointed to the timeline and to untainted sources of the information being available, whether or not the same information was available from a tainted source, relied on the trustworthiness of the witness testimony that the FBI did not consult the tainted sources, and determined that the witness testimony in most part cleared the problems of hearsay in the admissibility of the statements.¹

Recent Developments:

During witness testimony, the judge denied a defense motion to suppress statements from the accused, including threatening or obscene gestures made at guards or medical personnel, as recorded in the Detainee Information Management System (DIMS). Denial was made on the basis that the government team did not sufficiently identify which records it intended to use, so the defense was unable to sufficiently identify the records it sought to suppress.²

The judge has also ruled on a "Defense Motion to Suppress Statements in Letters to Abu Ja-afar, as Noticed by the Government in AE 440 B," but this ruling has not completed security review yet and is not available to the public.

Both the government and the defense have submitted notices concerning the appellate exhibits they wish the judge to review, and though neither of these notices have been security reviewed for public access, the judge can be expected to rule on the admissibility of FBI and FBI-NCIS interview statements shortly.^{3, 4}

1 Al Nashiri Transcript, 12 August 2022 Merged.

[https://www.mc.mil/Portals/0/pdfs/alNashiri2/Al%20Nashiri%20\(TRANS12Aug2022-MERGED\).pdf](https://www.mc.mil/Portals/0/pdfs/alNashiri2/Al%20Nashiri%20(TRANS12Aug2022-MERGED).pdf)

2 Ruling: Defense Motion to Suppress Statements Reflected in the Detainee Information Management System, as Noticed by the Government in AE 440 B.

[https://www.mc.mil/Portals/0/pdfs/alNashiri2/Al%20Nashiri%20II%20\(AE469C\(Ruling\)\).pdf](https://www.mc.mil/Portals/0/pdfs/alNashiri2/Al%20Nashiri%20II%20(AE469C(Ruling)).pdf)

3 "Government Notice Regarding Exhibits in Compliance with Commission Order."

4 "Defense Notice in Compliance with the Commission's 12 August 2022 Oral Order."