

**Military Commissions:
ISN 10015 Abd Al Rahim Hussein Muhammed Abdu Al Nashiri
December 5-9, 2022**

Events:

Two members of non-governmental organizations observed the December 5-9, 2022, week of military commissions pre-trial hearings for ISN 10015 Nashiri at Ft. George G. Meade's remote observation location in Maryland, with one member of the press attending the abbreviated session on Monday, December 5. For training purposes, five or more personnel assigned to escort and monitor observers also attended each session, instead of the regular single monitor.

The subject matter of this week's commissions hearings included hearing a motion to disqualify the military judge based on bias or perceived bias, witness testimony and argument about whether ISN 10015 Nashiri should be allowed to use a temporary holding facility at the Expeditionary Complex (EC) to stay overnight during hearing weeks, and a continuation of hearsay witness testimony from the October 2022 hearings.

The judge considered the motion to disqualify for a day and ultimately denied it, further denying defense team requests that part of their team be allowed to leave the courtroom to write an appeal of the denied motion. The judge heard the testimony of the Joint Detention Group (JDG) commander that the "right-sizing" of GTMO personnel in cooperation with Congressional budgeting meant that he had no staff to run extra missions, and Nashiri staying overnight at the EC is a mission outside of the governance documents of the current JDG. The commander proposed that if the judge ordered that Nashiri was to stay at the EC, the commander would be able to apply for more personnel and fulfill that mission. The judge made no ruling but did inform the defense team that if he ordered the JDG to facilitate Nashiri's stay, Nashiri would no longer be permitted the option of not attending his hearings.

The rest of the hearing sessions were a continuation of examinations and cross-examinations in which interviewing agents from the investigation of the U.S.S. *Cole* attack attested to the veracity of the summaries written on interviews of witnesses in Yemen and to having no memory or recall of any indication that the statements were given under duress, threat, or other involuntary circumstances.

Observations:

Though the judge has typically displayed patience and an even temperament, both the defense and government teams caused him evident annoyance during this week of hearings. The government attempted to argue a motion that the judge indicated was not to be argued at that time and at one point failed to have the witness staged for examination. The defense attempted to derail the hearing schedule by insisting that the judge rule on his own disqualification due to bias before any other work continued and later by insisting that Nashiri was receiving inadequate defense if the whole team was at the hearing, rather than working on motions which included an appeal of the denied disqualification. The judge adopted uncharacteristically terse wording to inform the defense that the client's interests were best served by having his counsel present in a long-scheduled hearing on his behalf, especially since motions could be written in the long weeks between the hearings at GTMO.

The judge maintained an even disposition during the witness hearsay testimony, displaying no bias. The government team focused on putting the story and investigation of the *Cole* bombing onto the record, and the defense team focused on casting doubt on the testimony by suggesting that the government had not done its own investigation but relied on the Yemeni police. The judge's questions parsed out that the

witness did not remember each of the interviewees, but that the reports placed into evidence were accurate based on being written immediately after interviews, and that the U.S. investigators were not able to investigate the backgrounds of the witnesses on their own due to diplomatic agreements with Yemen.

At this time, the judge appears disinclined to disqualify the submitted statements recorded from witness interviews in Yemen as hearsay.