

**Military Commissions:
Week of February 13–17, 2023
Pre-Trial Hearings, ISN 10026 Hadi Al Iraqi**

Events:

The hearings at Ft. George G. Meade on Monday, February 13, were closed sessions. Open sessions began at 9:00 a.m. on Tuesday, February 14, and were observed by two escorts, a member of the DOD Security Classification/Declassification Review Team, and an investigator from Judicial Watch. Defendant, ISN 10026 Hadi Al Iraqi (Hadi), was in attendance.

The judge dealt with procedural matters, including informing Hadi of his rights of attendance or non-attendance at hearings and possible ramifications of non-attendance, then directed that the primary item of business for the session was to clarify and cement all parties' understanding of waived and unwaived motions and rights pursuant to the pre-trial agreement. The judge provided a worksheet to the government and the defense that listed all the motions where the judge had not been able to determine the parties' perspectives, despite prior discussion. The judge then directed the government to initial columns marked "Waived per PTA" or "Not Waived per PTA," and the defense to initial columns marked "Waived per PTA," "Not Waived per PTA," or "Separately Waived, Withdrawn, or Otherwise Mooted," in accordance with their perspectives or understandings.¹ The judge directed that this worksheet be completed and filed by the evening of Thursday, February 16, for any discussion or argument on Friday, February 17.

The government and defense complied with the judge's orders, filing an initialed worksheet approved by both the Office of Military Commissions Convening Authority and the defendant.² The commission held open arguments on one point of disagreement in the worksheet, wherein the government considered medical discovery to have been waived by the pre-trial agreement, but the defense held that requested medical documents were not waived in any way. Ultimately, the government agreed to provide the most recent and ongoing medical documentation, and the defense indicated that that suited their purposes of discovery.

Observations:

Although the terms of the pre-trial agreement are still not open to the public on the Military Commissions website, the reason for the concern and insistence by the defense that medical discovery was not waived is that recent treatment documents recording Hadi's current diagnoses are required by the Department of State.³ The Department of State requires the most current medical records in order to find and negotiate with a third country to facilitate the detainee's transfer. This requirement indicates three potential features of the pre-trial plea agreement:

- The agreement may contain time-served provisions or an upper bound on sentence duration that would nullify any sentencing that the military commissions panel recommends.⁴

1 "AE 217 L, ORDER: Accounting for Pending Items Within the Context of the Pretrial Agreement, 14 February 2023, with Attachment A" [https://www.mc.mil/Portals/0/pdfs/allIraqi/AI%20Iraqi%20\(AE217L\(ORDER\)\).pdf](https://www.mc.mil/Portals/0/pdfs/allIraqi/AI%20Iraqi%20(AE217L(ORDER)).pdf)

2 "AE 217 M, Joint Notice to the Commission Pursuant to AE 217 L, 16 February 2023, with Attachments A-C" [https://www.mc.mil/Portals/0/pdfs/allIraqi/AI%20Iraqi%20\(AE217M\).pdf](https://www.mc.mil/Portals/0/pdfs/allIraqi/AI%20Iraqi%20(AE217M).pdf)

3 <https://www.mc.mil/>

4 Per the plea agreement and sentencing conducted in the ISN 10020 Majid Khan commission, the sentencing panel will not be informed of the conditions of the plea agreement, so they will not be aware of the efficacy or futility of their sentencing deliberations and will not be able to consider this when asked to make any recommendations for or against clemency.

- The agreement may contain specifications that Hadi be permitted to serve time in a third nation.⁵
- The agreement may contain compensation due to the detainee in the event of further detention at GTMO after the conclusion of the sentence, encouraging the U.S. government to secure a transfer destination immediately.⁶

Judge Lt. Col. Rosenow made significant mention of his imminent retirement on 1AUG2023 prior to assigning the defense and government teams the worksheet. With the legally binding responses on the worksheet, the pre-trial agreement went into full effect to skip all other trial procedures except the unwaived motions and the sentencing hearing, unless Hadi decides to withdraw his plea. The judge can schedule the few unwaived motions for argument and decide them, then possibly complete the sentencing hearing. If this judge does not complete the sentencing hearing before his retirement, his successor will be able to complete sentencing without reading the entire body of the case. Providing a worksheet for completion removed what could otherwise have taken several years more of pre-trial argument.

Since the pre-trial agreement is not open to the public, Judge Rosenow's use of a worksheet to bring quicker resolution to this case creates the appearance that political pressure may have been brought to enable the closure of GTMO. And without knowing the terms of the pre-trial agreement, the judge's prior voir dire pledge that he would not be influenced by command pressure is the only assurance the public is offered.

5 This has not been done in the Military Commissions before but has precedence within the Administrative Review Board (ARB) and Periodic Review Board (PRB) procedures. Both Boards made transfer approvals that were contingent upon third countries having required levels of monitoring, reintegration, and anti-recidivism capabilities.

6 This has not been done in the Military Commissions before, but ISN 10020 Majid Khan remained at GTMO after the conclusion of his sentence, as have several detainees approved for transfer by the PRB process, because third countries are unwilling to receive more detainees. That has been raised as a point of comment in both the Military Commissions and the PRB.