

**Military Commissions:  
Post-Plea Agreement Pre-Trial Hearings, JUN 5–8, 2023  
ISN 10026 Abd Al Hadi Al Iraqi**

On the morning of June 5, 2023, a new judge was detailed to the Hadi Al Iraqi case, and underwent Voir Dire by the government and defense teams.<sup>1</sup> The judge then closed the sessions for late morning, the afternoon, and the next day. Open sessions resumed on June 7, and argument began regarding AE 230 K, both a government table of defense requests for medical-adjacent documents and their fulfillment status and defense's objections to the records provided by the government. Hadi Al Iraqi absented himself from the proceedings midway through the arguments.

The defense team alleged that the government had mishandled and improperly maintained medical documents, that medical care given to the detainee was deliberately sabotaged by choosing the most junior neurologist to perform surgeries, and that the government was withholding documents necessary to finding a third country with suitable medical support for Hadi Al Iraqi's eventual transfer. The judge stated his disagreement with the defense's characterization that the detainee's "right to his own medical record" was necessary to the "preparation of the defense," which was the standard for discovery. He quizzed the government on the storage status of the medical record with the expectation that it was all kept in one place under the supervision of one person assigned to that task. Argument continued to address AE 214 S, which concerned medical-adjacent documents, such as e-mail communications between the doctors who planned the spinal surgeries that the detainee eventually underwent and post-operative care communications. The defense expressed concern that Hadi Al Iraqi had been deprived of a right to counsel during his recovery.

After closing the commission for June 8, 2023, the judge recalled the commission to open session on June 9, 2023, for a brief discussion on whether the government team provides a post-Pre-Trial Agreement advice statement to witnesses supplied by the DOD and by other agencies and if it would have a chilling effect on witness discussions with the defense. It was shown to be hypothetical since witnesses had not been supplied in post-Pre-Trial Agreement time. The judge determined he needed to reconsider de novo the agreement and review an actual advice statement. He then instructed the government and defense teams to discuss the sentencing hearing's scheduling, encouraging them to suggest times earlier than June 2024, when the judge can schedule the hearing.

The judge recessed the commission until August 7, 2023.

*Observations:*

Though appearing neutral, the new judge seemed equally hostile to both the government and the defense teams and gave the impression of not wanting any part of the military commissions process. Unlike prior judges, he has not acquainted himself with the administrative and functional processes behind the commissions and reveals this through unrealistic expectations of discovery generation, defense's ability to gain the client's cooperation, and GTMO base procedures. Additionally, the judge required instruction on how military commissions 505 and 506 procedures functioned. This irregular behavior, as well as the judge pressing the government and defense teams to shorten the timeline until the sentencing hearing, may lead to some form of mistrial or a superior or adjacent court to request the judge recuse himself.

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<sup>1</sup> Summary of Judge Pritchard's Voir Dire posted to Archive Section [HERE](#).

Though Hadi Al Iraqi was present for some of the proceedings and interacted with the judge in a respectful manner, he appeared distracted when seen on camera. The defense team indicated that he was in a growing degree of pain toward the afternoons, which may have accounted for his inattention, but he exhibited good spinal mobility and did not appear to be highly impaired. His apparent mobility was at odds with defense arguments that the assignment of the “most junior neurologist,” to perform Hadi Al Iraqi's first spinal surgery had necessitated the subsequent spinal surgeries and crippled their client. It was disclosed, however, that it was the third-most-senior neurosurgeon who had performed Hadi's first spinal surgery.

Discussion of the proceedings during closed sessions and short recesses among observers saw demands by the defense for top-notch medical care for Hadi Al Iraqi, while ignoring the needs of other Guantanamo Bay detainees, questionable. This coupled with further demands by the defense for continuing medical care for the detainee's spinal problems outside of U.S. custody caused varying levels of antipathy toward the detainee. If the proceedings had been broadcast to a larger American population, it is likely that this week of sessions would have aroused feelings of hostility toward Hadi Al Iraqi.