

*Military Commissions:*  
**ISN 10015 Abd Al Rahim Hussein Muhammed Abdu Al Nashiri (“Nashiri”)**  
**January 20-24, 2025**  
**Pre-Trial Week**

*Events:*

The Nashiri proceedings did not begin until 9:30 a.m. on Tuesday, January 21, 2025, in observance of the Martin Luther King, Jr., federal holiday. The start time was staggered with the concurrent KSM et. al., (“KSM”) hearings to ease security processing of observers and trial teams. Proceedings did not actually begin until 10:00 a.m.

The observation center at Ft. George G. Meade provided two televisions tuned concurrently to the Nashiri and KSM hearings, providing individual radio headsets that allowed observers to select the auditory feed that matched the hearing. Initial technical difficulties led to only one feed or the other being available, but this difficulty was resolved shortly after 10:00 a.m.

Though government witnesses were listed first on the court docket, the defense for Nashiri moved for a continuance that would prevent hearing the witnesses at this time based on three arguments:

1. *Conflict of interest:* One of the judge's long-tenured trial judiciary staff members entered an application to join the FBI on January 20, 2025. Since one or more of the government witnesses were from the FBI, there was a potential conflict of interest concerning the trial judiciary staff member's allegiance.
2. *Unfinished briefing cycle:* The briefing cycle should be completed prior to hearing any witnesses, specifically a motion in AE 588 G contending jurisdiction. The defense holds that “unprivileged” in the government-applied term “alien unprivileged enemy belligerent” is at issue. If Nashiri is determined not to be “unprivileged,” the government has no personal jurisdiction over him.
3. *Cumulative testimony with no personal knowledge:* Since the government has already presented this testimony and the points are already on the record, these witnesses represent cumulative value only and should not be heard as they are likely to confuse the issues. Additionally, the witnesses do not have personal knowledge of the events and will instead be testifying as to the contents of records.

After hearing arguments, the judge ruled that there was no conflict of interest regarding the member of the commission staff applying for a position in the FBI. The judge was previously made aware of the intent to apply, and that while staff can offer advice, they are not the judge and do not have decision-making authority. The judge also denied a continuance to complete the briefing cycle because testimony can be struck from the record if the later briefing cycle shows that to be necessary. Finally, the judge also ruled that “pre-trial” does not need to follow “in-trial” rules of evidence regarding cumulative effects, so hearing the witnesses’ testimony would go forward. He noted that his ruling does not block any objections made on the same basis, and such objections would be entered into the record.

**First Witness, Supervisory Special Agent Janet Jorgensen**

The first witness called was Supervisory Special Agent Janet Jorgensen, who was assigned by the FBI to the Nashiri/*Cole* prosecution unit eight months ago. She fully reviewed the FBI's case file on Nashiri and is deeply familiar with the evidence, testimony, analysis, and socio-cultural environment of the

events. Under government examination, she discussed the gathered evidence linking Nashiri to each step of the U.S.S. *Cole* bombing planning and execution, which included DNA, fingerprints, receipts, telephone calls, Nashiri's own responses in interview, and eyewitness testimony concerning Nashiri meeting with and receiving funding and supplies from Osama Bin Laden and other members of Al Qaeda. Under defense cross-examination, she noted that Nashiri's interviews were recorded in FD-302s, so they were not word-for-word transcripts, and she confirmed that she had not reviewed any CIA documents or information. During the government's redirect, she acknowledged hearing that a member of the trial judiciary staff was applying to join the FBI and affirmed that it did not impact her testimony in any way.

### **Second Witness, Agent Joseph Hokenson**

The second witness called was Agent Joseph Hokenson. On government examination, he stated that he had been a part of the FBI's military commissions prosecution unit since August 2002 but was specifically assigned to the Nashiri/*Cole* prosecution unit in April 2024 and has long been a part of the FBI task forces on international and domestic terrorism. He specialized in knowledge about Al Qaeda's public documents, including declarations of holy war, fatwas, the "Islamic Nuclear Bomb," the Osama Bin Laden interviews, and the videos about the attack on the *Cole*. The witness was recalled on January 22 for defense cross-examination and was in the middle of defining different forms of Islam when power outages at GTMO cut proceedings until 2:11 p.m. After the commission was recalled to order, the judge conducted some *voir dire* regarding Agent Hokenson's experiences as a civilian reservist when he was flying survivors of one of the previously referenced attacks from an arrival point in the U.S. to medical centers in the U.S. that were close to their families.

### **Third Witness, Robert McFadden**

The third witness called was Robert McFadden. On January 22, his testimony was repeatedly halted because the power outages at GTMO led to the loop (mechanism that ensures the 40-second delay of the feed for purposes of security classification monitoring) losing function and transmitting the feed simultaneously in real time and on delay. McFadden confirmed that he was part of the Naval Investigative Service/Naval Criminal Investigative Service, first as part of the felony squad and then as part of the counter-terrorism squad. When he received news of the *Cole* bombing, he volunteered for and was detailed to joint efforts to investigate events and gather evidence for eventual prosecution, which efforts were aided by his understanding of the Yemeni dialect of Arabic. During examination, he identified locations of known events leading up to the *Cole* bombing, identified photographs of known participants in the events, discussed the investigative and interview activities, and established where in the investigative timeline key points of understanding were reached. His testimony was abruptly cut off by another power outage at GTMO.

On January 23, proceedings were called to order at 9:42 a.m. but swiftly recessed due to questions about the voluntariness of Nashiri's absence considering the defense team's difficulty in contacting him. At 11:56 a.m. the judge ruled that Nashiri's assessment of his own sinus issues and determination to waive attendance was voluntary, but that a revisitation of the issue would be allowed after the scheduled treatment by an Ear, Nose, and Throat specialist.

### **Fourth Witness, Camp 7 Commander**

The Camp 7 Commander, who was in command when the High-Value Detainees (HVDs) arrived, was then called as a witness. During direct examination, he testified to the housing, freedom of movement, medical and psychological care, recreation, interaction, and amenity opportunities provided to the HVDs. He also discussed the halal meals, religious accommodations, and visitors permitted for the HVDs. At times, testimony focused specifically on the conditions experienced by Bin Attash, because

Bin Attash's witness testimony was most incriminating to Nashiri. Defense's cross-examination focused on if and when Bin Attash discussed his RDI experiences with the Commander, why movement outside of Camp 7 required the use of ear muffs and blindfolds, the Commander's recollections of FBI and Criminal Investigative Task Force (CITF) interviews and accommodations, Bin Attash's meetings with the International Committee of the Red Cross (ICRC) representatives, and detainee-guard force interaction tracking through Detainee Information Management System (DIMS) records. The government repeated a lot of the cross-examination questions for clarification purposes. The commission then went into closed direct examination, with possible closed cross-examination afterward.

The commission initially expected to open on January 24 at 9:00 a.m., due to the cessation of KSM hearings, but further open sessions were canceled that day. The judge indicated that the Camp 7 Commander should be made available for further questioning at a later date as needed, but there was no indication when Agent Joseph Hokenson and Robert McFadden's testimony would be completed.

*Observations:*

This was the first appearance of Nashiri's new lead defense counsel. Though she repeatedly indicated she was more familiar and comfortable with civilian court rather than with military commission proceedings – and asked for patience while she came up to speed – she made every possible objection, moved for dismissal or continuance at every opportunity, and delayed proceedings in an overabundance of caution. This may indicate that she is highly aware that the defense team acted together to force the last lead defense counsel out for “ineffective assistance,” and she does not intend to give any opportunity to be accused of the same. It may also be indicative of a less-than-united spirit within the defense team and potentially provide Nashiri with a reason to appeal or seek nullification of any findings of the Military Commissions.

The only witness that Nashiri waived his right to see was the Camp 7 Commander. Though the stated reason for his absence was a sinus flare-up, it could also have been intended as a snub, mimicking KSM behavior.

If the KSM defendants are permitted to conclude a plea agreement, the Nashiri proceedings may move in a similar direction. The FBI and Naval agents called as witnesses largely reinforced the government's already strong case, and the Camp 7 Commander gave testimony that would speak against clemency. The Nashiri defense team will therefore most likely seek an alternative arrangement to avoid a full trial with a sentencing panel composed of military personnel. A plea agreement that limits the actions of the sentencing panel, if allowed, may present itself as the safest route.