Military Commissions:
ISN 10015
Abd Al Rahim Hussein Muhammed Abdu Al Nashiri
Pre-Trial Hearings from March 10-21, 2025

Events:
The pre-trial witness and motions hearings for ISN 10015 Nashiri began on March 10, 2025, with the judge setting the schedule for two weeks, to include scheduled recesses to accommodate potential signal interference. He admonished counsel that the Remote Hearing Room (RHR) is an extension of the well of the courtroom and should not be subject to continuous entrances and exits. The defense requested and was granted either a closed session or a court recess on March 12, 2025, to allow the defense's expert witness, Dr. Sandra Crosby, to complete a round of testing on Nashiri for the purposes of determining the presence and extent of any PTSD symptoms beyond what she had already predicted.

Defense Motion concerning undue command influence and petition for extension of trial date
The first motion (AE 604 A and B) brought by the defense combined both an assertion of undue command influence over the Convening Authority and a petition for an extension of the trial commencement date of October 6, 2025. As a basis for this motion, the defense claimed that up to 60 percent of its time currently is spent explaining its functions and daily activities to the Department of Government Efficiency (DOGE), that interactions with DOGE have led the Convening Authority to cancel contracts for the defense's civilian contract-term employees and the denial of hiring a second investigator to assist with the pre-trial interview of 400+ witnesses. Further, due to DOGE's influence, the SecDef has enacted policies against remote work limiting the remaining investigator's ability to travel to interview potential witnesses in their environs.

The defense also noted that a pre-trial agreement had been under negotiation with the Convening Authority but had stalled when the 9-11 KSM pre-trial agreements met with legal pushback, and negotiations will not resume due to DOGE's interference. Since DOGE is slated to finish work with the DoD in March 2026, the defense requested that all trial plans be postponed until then, unless DOGE is ordered to cease impacting the Military Commissions.

The government asked to delay its response, so the AE 604 argument was continued until March 20, 2025. However, the government noted that there were still many months ahead for the defense to prepare for an October trial date, so postponement was unnecessary. In support, the government said that some pre-trial sessions have already been canceled or curtailed due to fewer motions to argue and the realization that many of the motions were repetitive. The government also noted that the defense team is formidable and could power through its planned work even with only one investigator. The defense agreed that its team is formidable but countered that because too much time had been "wasted" on attempting to negotiate a pre-trial agreement, they were in danger of missing client representation opportunities. Further, defense argued that "An October 6 trial date would set us up for decades of appeals," when everyone is looking for a case that definitively ends. The judge indicated an unwillingness to rule from the bench on this motion and directed the teams to work to the scheduled docket unless and until he ruled otherwise.

Defense Motion to Compel Testimony of Witnesses
The second motion (AE 569 P) brought by the defense sought to compel the testimony of three witnesses. The first witness, Dr. Won, has testified in Military Commissions before, but the defense noted that he may be hostile. If he is not compelled to testify, the defense requested a direct interview to arrange stipulations of fact to which the government can agree.

The second witness, Admiral Walsh, is the commander of JTF-GTMO who authored a report on conditions of confinement for detainees. The defense held that a report is no substitute for examination, or at least an interview.

The third witness, a CIA agent known as Officer CI5, could not be discussed in open session.

The government countered against compelling Admiral Walsh's testimony because his report contains his full testimony, and there were other witnesses already being examined who could provide more granular information on the conditions of confinement.

As for Officer CI5, the government suggested a different witness who would be best to address the information the defense was seeking. The defense indicated that it would gladly accept both CI5 and the other suggested witness to determine where testimonies agree and where they diverge.

Defense Motion to suppress statements by Camp 7 recreation partner and on-site visit
The third motion (AE 569 M) brought by the defense argued for the suppression of statements made by Nashiri's Camp 7 recreation partner due to the inhumanity of conditions at Camp 7 and suggested that a defense-guided visit to Camp 7 was essential for the judge because photographs and testimonies could not adequately illustrate the oppressiveness of the conditions.

The government countered that a visit was unnecessary due to the extensive reports on the conditions of Camp 7 while the detainees were housed there and from spherical photographic representations of the cells. Further, the government informed the court that Camp 7 has been condemned and was actively hazardous, raising doubt about the feasibility of a mass visit. However, the government's counter argument was halted, and the court requested that counsel contact personnel in charge of Camp 7 to determine what would be required for a site visit. Over the course of the two-week hearing, the government learned that a visit to Camp 7 would require Tyvek suits, gloves, and some personal protective equipment for the head. And the government eventually learned there was sufficient personal protective equipment to supply the judge and his staff. The judge determined that he would visit himself, on March 21, 2025, with up to four members of his staff, without guidance from the defense or government team. The only other person attending would be the Camp 7 personnel member who was required to unlock the site and direct where certain features were located.

Witness Testimony by Agenda McFadden
Agent McFadden was called to continue his testimony on March 11, 2025, beginning with his level of expertise on Al Qaeda and methods of tracking or investigating Nashiri. Though the government had not initially offered McFadden as an expert witness, the defense began asking him a mix of questions that appeared more analogous to *voir dire* – and an attempt to impeach his testimony. The judge halted questioning and called a recess for the defense to separate its *voir dire* questions from its impeachment questions. After recess, the defense questions maintained the same apparent mixture, until the judge excused the witness and heard arguments from both the defense and the prosecution as to McFadden's suitability as an expert. Once the witness was recalled, questions from both the defense and the government focused on McFadden's investigative techniques while gathering evidence about the U.S.S. *Cole*, and on Nashiri's standing as a combatant, belligerent, or other kind of fighter.

Defense Motion to Compel Discovery
The fourth motion (AE 599 E) was argued next and related to defense discovery requests for the *Cole*'s orders and interagency documents from the Department of State about the determination of terrorist

organizations. The defense concluded that the documents that had been released to it in response could not have been all the responsive documents and argued that they were necessary to establish whether the U.S. was in hostilities with Al Qaeda at the time. After the defense presented its arguments, the judge recessed, then returned to the courtroom to remind all teams about the moratorium on further discovery requests and the procedures in place if the moratorium needed to be breached. The government team responded that it had not requested the commission's permission for disclosure because it was actively fulfilling the discovery requests filed prior to the moratorium and had received requests for both “relevant” orders and “all” orders. The government also countered that all documents had been provided, with many having been previously released to the defense. The government offered a citation index to point to those documents but requested a modification to the discovery order so that the commission would be automatically given eyes-on for any requests.

Defense Motion re voluntariness of Khallad Bin Attash’s Letterhead Memorandum statements
The fifth motion (AE 571) was heard on March 13, 2025, and pertained to the voluntariness of Khallad Bin Attash's Letterhead Memorandum (LHM) statements. Though the judge ruled Nashiri's LHM statements inadmissible, Khallad's were potentially admissible because he only underwent one night of Enhanced Interrogation Techniques in 2003, and he gave the LHM statements in 2007 under vastly different circumstances. The government argued that Khallad maintained his own sort of operational security while being interrogated but enjoyed leading the conversations and bringing up his own associative topics during the LHM interviews. The defense held that once-tortured is always-tortured, and that any statement came from a tainted well of duress. The government pointed out that the defense used drawings created by a different detainee under EITs and failed to properly cite them, intimating that Khallad had drawn them. The defense did not offer an explanation. The government stated that the RDI program had not turned Khallad into a robot or a Manchurian Candidate, unable to say anything but a programmed message. When the judge asked about Khallad being called as a witness, the government noted that his testimony had been deemed necessary for this motion, but he failed to show. Unless he was granted some sort of immunity, it would be unlikely. The interviewing FBI and NCIS agents might be the only witnesses for the defense to cross-examine.

Defense Motion concerning Massiah violation
The sixth motion (AE 573) was mostly classified, so detailed argument was saved for a closed session. In open session, the defense argued that the only purpose for providing Nashiri’s recreation partner, Al Libi, was for the purpose of recording their conversations and gathering evidence, which is a Massiah violation. The defense also portrayed the Combatant Status Review Tribunal as a prosecutorial event, asserting that the right to counsel should have attached. The government countered that a Massiah violation did not apply because there was no agreement in place with Al Libi, and he had never been tasked to converse with Nashiri. Also, no part of the plea agreement with Majid Khan required him to inform on or surveil Nashiri, so a Massiah violation was not applicable in that case either. Additionally, the ruling in 468 D had determined that the right to counsel attached in 2008 with the referral of charges, accusing the defense of attempting to retry a motion without specifying its intention to do so.

Defense Motion for reconsideration that true names of GTMO medical providers be released
The seventh motion, AE 558 E, was a motion the government placed before the judge requesting the reconsideration of an order to release the true names of GTMO medical providers, because the Original Classification Authorities had considered the order and the information to be released but had deemed classification of the names to be necessary and proper. The government requested that the judge instead instate a protective order for the defense to initiate contact with these personnel through SJA-SOUTHCOM and noted that the prosecution would not be involved in the process. The defense said that instead of protective orders, the judge should consider sanctions, because the 9-11 commissions

had given the defense this information in 2018. The government stated that new facts not in evidence at the time of the 9-11 commission determination were brought up in a declaration submitted by the Original Classification Authorities.

Witness Testimony by Camp 7 Commander
On March 18, 2025, the former Camp 7 Commander concluded his witness testimony from January. The cross-examination and redirect revealed nothing significantly new.

Witness Testimony by former second commander of Joint Task Force Guantanamo (JTF-GTMO)
On March 19, 2025, the former second commander of JTF-GTMO was called by the government to testify. He noted his surprise to have been selected to oversee JTF-GTMO, given that he was a newly minted one-star at the time and JTF commands usually went to experienced three-stars, but he accepted and trained for the position at the Washington camp simulator, where contracted actors played the roles of the detainees. Thereafter, he reported to Naval Station Guantanamo Bay and took over command of JTF-GTMO. Part of his oversight included visiting Camp 7, frequently and randomly interfacing with each member of the guard force and, sometimes, speaking with the detainees themselves. He felt confident that he would have known if the detainees were being mistreated because the detainees would have told him. Further, he would have seen it during a random visit, and he would have received information regarding it in his daily medical briefings. The Camp 7 Senior Medical Officer treated guard force and detainees alike, and medical care was available 24 hours a day, seven days a week.

When asked to describe Camp 7, he said that the cells were 15' x 8’ with a bed, a combination sink-toilet standard to U.S. detention facilities, and a shower not common to U.S. detention facilities. He remembered 4200 calories of food being offered each day, with special preparations to accommodate dietary or religious needs as a matter of course. NGO visitors and the commander regularly enjoyed the same meals that were being provided to the detainees. Movies and TV were available, and he recalled the whole detainee population particularly enjoying “The Deadliest Catch,” because “they seemed to enjoy seeing Americans getting beaten up on the ocean.” The International Committee of the Red Cross (ICRC) visited quarterly, though meetings with ICRC representatives were optional. Medical care was always available, with specialists brought in regularly. (The witness particularly recalled the prosthetics specialists.) If he had been told that Nashiri was being denied medical care, he would have immediately initiated a drill-down investigation. All detainee complaints that reached him started an initial investigation and then elevated to his superiors as appropriate.

Under his command, detention operations never fell below the Geneva or safe-and-humane standards, and he never knew Nashiri to have been subject to cruel, unusual, inhumane, or degrading treatment. Though recreation partners had been set prior to his tenure, he later authorized interactions with the high-value detainees in Camp Echo-2. This authorization was part of a response to staff reports that detainee attitude was deteriorating due to interaction with only one partner, and it was accompanied by the addition of a media room, extracellular time, extended recreational time, and the provision of exercise equipment. He did not recall specific PTSD or torture-care training and opined that the hunger strikes and suicides that took place at GTMO were not acts of desperation but were Al Qaeda-influenced acts of asymmetric warfare.

Defense Motion for Schedule Modifications to Accommodate Nashiri’s Health Limitations
On March 20, 2025, the first motion by the defense (AE 610) proposed that all pre-trial, trial, and sentencing days end at 4:30 p.m., and that the commission establish midweek days off, to alleviate exhaustion and physical discomforts that Nashiri attributes to court attendance and causes him to waive attendance at some hearings so he can recover. The defense suggested this as an alternative to the oft-

denied request that Nashiri be permitted to spend commission weeks sleeping in the Expeditionary Legal Complex (ELC), rather than being transported to court every morning. The defense contended that waiving his presence in court or from the remote location cell near the courtroom due to physical discomfort is not truly voluntary when it becomes a choice between attendance and personal health. The defense asked for a 4:30 cut-off time because spinal problems make it difficult for Nashiri to sit in the ergonomic chairs provided to the commission for long durations, even with the provision of additional pillows and blankets.

The defense also asked for days off for Nashiri due to the cascading effects of the treatments he receives for PTSD flashbacks, which are triggered when he is transported to hearings, causing him to feel as if he were being placed in a box and shaken. This, in turn, exacerbates his motion sickness. To treat his motion sickness, he is given Dramamine, which leaves "his head feeling like Jell-O" and unable to stay awake in court. To maintain his alertness, he is given Adderall, which leaves him fidgeting in court and insomniac at night. The defense asserted that Nashiri can only manage two or three days of the cycle in a row.

Alternatively, the defense presented an AE from the military commission for Hadi Al Iraqi that permitted Hadi to stay in the ELC following his surgery using a specialized hospital bed that is still stored in the courtroom. The defense suggested that the judge could reconsider the denial of overnight stays. The government noted that Hadi Al Iraqi had a degenerative spine condition prior to entry to GTMO and was genuinely bed-ridden at the time of that order, unable to move around or go to the remote location cell for relief of discomfort. The government also stated that healthcare is a complex system that needs to be handled on a case-by-case basis, and the commission is "not a test tube for Nashiri's treatment," so the court should not be forced to make accommodations for problems that should be brought to medical staff.

The judge asked the government if the legal officer follows up with medical treatment for Nashiri when his waiver involves a medical complaint. The government replied that the legal officer reports the complaints to medical staff, but he did not know if there was follow up by the medical staff. The judge directed that in the event of medical complaints, a field should be added to the waiver form to confirm the taking of vital signs and evaluation, including if they fall inside normal parameters. The defense responded that the defendant is still required to attend all hearings if he is to have maximum input to his own defense, so headaches and pain make a waiver involuntary. The judge stated his concern with handing Nashiri a way to veto the commissions on given days; however, a "Secure Session" interruption obscured the defense's response for having either referred to the exact location of the remote viewing cell or for having described it. The government made a final point against authorizing overnight stays by noting that in addition to the security and manpower hurdles, it would also constitute the sort of isolation that the defense had been arguing was inhumane and degrading in other motions.

Defense Motion to Call DOGE/Secretary of Defense (SecDef) Witnesses re Targeted Budget Cuts
The next defense motion (AE 609 as related to AE 604 B) asserted that the cancellation of civilian term contracts, denial of a contract for another investigator, and the requirement of national capital region work siting prompted by DOGE constituted a targeted attack either by DOGE or the SecDef upon the defense in this case and the Military Commissions Defense Organization (MCDO) writ large. To ascertain whether this is true or not, the defense petitioned to call Elon Musk, the SecDef, Brent Harvey, and several other people appearing in e-mail chains discussing the contract cancellations and denials for examination of witnesses.

The government opposed the motion, asserting that neither Elon Musk nor the SecDef know or hold animosity toward this case, so they would be irrelevant as witnesses. Additionally, neither the government nor the defense know who Brent Harvey is, he just appears to be a DOD attorney functioning as an intermediary between the MCDO, the office of the SecDef, and possibly DOGE. As such, it would be better to order declarations from the requested parties, rather than calling them as witnesses, and that seeking solutions to the problems of declined contracts would be more appropriate than hunting for conspiracies against the defense.

The defense responded that revoked and denied contracts and the requirement that the investigator work in the national capital region instead of going to remote sites to interview potential witnesses make the effective defense of Nashiri impossible, so in the absence of calling the requested witnesses, the appropriate relief would be to abate proceedings.

The judge asserted that he would only consider the motion to compel witnesses and would not consider abating the proceedings as relief unless another motion is filed for relief from undue command influence.

Observations:
The judge remains committed to the prospect of an October 6, 2025, trial date for the Nashiri military commission. Though the judge stated that he does not intend to rush to trial, approval of any changes to the trial schedule due to counsel availability or motions that could impact the trial date appeared weighted towards keeping on track.

In motions argued by the lead learned defense counsel, Allison Miller, related to DOGE activity, she gave the impression that she and the other defense counsel were not a cohesive team. She came across as aggrieved or desperate in her remarks, stating that the investigator whose contract was being denied and who does not live or work in the national capital region is the one with whom she has worked before and in whose skill she is confident. Further, she told the judge that she had hoped the trial would be delayed until March 2026 because the first months of her tenure had been wasted in negotiating a pre-trial agreement that the government would now not accept – and she was still struggling to catch up with the rest of the case, including all of the differences between the civilian courts she is accustomed to and the military commissions.

The implication was that she cannot or does not feel she can rely on the rest of the team to assist with or cover her points of inexperience. Several motions argued were explicitly stated by her team to have been filed prior to her tenure. And the government's assertion that the defense team was formidable appeared to surprise her. If true and not feigned to draw the sympathies of the commission, Ms. Miller may still be feeling insecure about her position due to the prior lead defense counsel being removed with the full support of the team.

The most frequently repeated topic of discussion during these hearings was Nashiri’s presence or absence in court or at the remote observation location. When Nashiri chose to observe the commission from outside of the courtroom, the lead defense counsel explained it was due to Nashiri either feeling pain in his back and needing relief, or as Nashiri being concerned that his fidgeting and blowing his nose was disturbing the court. When Nashiri is visible in court, he primarily adopts a slouched posture and twists in his chair in near-constant motion. When Nashiri elected to waive his attendance for exhaustion and body aches, the defense was quick to assert that the discomfort had reached a threshold that waiving attendance was a matter of necessity, not voluntary. However, there appears to be a pattern to Nashiri's retreats to the remote location cell and waivers of attendance, as they seem to occur when

he becomes the focus of testimony, either when witnesses he has met are testifying or the defense is reporting something he has said.

The issue that generated the most discussion among observers at Ft. Meade was the request that Nashiri be allowed to sleep at the ELC rather than commute from his detention location on the basis that his medical situation was complicated enough to warrant special accommodation. All observers considered the argument for relief unconvincing. Acknowledging not having been diagnosed with PTSD, one observer reported having had similar experiences with severe motion sickness sensitivity and said that in the worst case, symptoms typically abate within an hour of cessation of the stimulus. Both the relief requested and the current treatment for symptoms experienced appear to be excessive for the problem to be addressed.