

Military Commissions:
ISN 10015
Abd Al Rahim Hussein Muhammed Abdu Al Nashiri
Pre-Trial Hearings from May 5-9, 2025

Events:

The May 5-9 pre-trial hearings began with the usual procedural preliminaries for Abd Al Rahim Hussein Muhammed Abdu Al Nashiri (Nashiri), including the presence or absence of counsel and Nashiri's understanding of his legal rights. A preliminary ruling was announced on a previously heard motion and several other motions were heard this week in open court, with only brief retreats to closed sessions.

Preliminary Ruling on Defense's Motion to Postpone Trial Date

At the previous hearing, the judge heard oral argument on defense's motion (AE 604 B) to postpone the trial from October 6, 2025, to July 4, 2028, and the government's opposition to the motion. The judge announced at this hearing that he would be granting the continuance in part and adjusting the schedule, though not to the degree requested by the defense. After announcing that his written ruling would follow, the judge invited the defense and government teams to comment on his decision. Both teams took the invitation as an opportunity to reargue the motion, rather than comment on the judge's ruling.

The defense repeated previous arguments and complaints about the Department of Government Efficiency (DOGE) interfering with the hiring of investigators and other contractors for the defense, causing extra work that prevented the lead defense counsel from speedily developing familiarity and expertise in the case, and potentially delaying the appointment of another Military Commissions Defense Office (MCDO) chief. And, as before, the defense accused DOGE of unlawfully exercising command influence over prior MCDO chief Brig. Gen. Thompson and the current acting MCDO chief, suggesting that any further proceedings should not be held prior to gaining Thompson's testimony on the subject. The judge did not react to these arguments other than to caution the defense that undue command influence was not part of the current motion and should be brought before the court in a separate motion. After further discussion, the defense acknowledged that the Military Commissions process does not have contempt powers and stated they will be entering a motion to abate due to unlawful influence.

The government responded by noting that it desired to incorporate all of its arguments on this motion that were presented in the last session, as well as note that much of the defense's argument was functionally for reconsideration of the ruling on a motion concerning witness compulsion. The government noted that Brig. Gen. Thompson is not unavailable, just unwilling to talk with the defense during his processing-out of the military and that all of the defense's arguments, especially the choice of July 4, 2028, as a date that DOGE would be finished dismantling the DOD, were hyperbolic, given that the same impacts on defense teams in other commissions have not brought any cases to a halt.

Ultimately, the judge maintained his announced preliminary ruling of May 7, 2025, granting a continuance of the trial date to June 1, 2026.

Motion to Allow Certain Statements by Government Witness, Al Khazimi, at Trial

The court then heard the government's motion (AE 612) concerning suppression of statements made by Al Khazimi that they were relying on for purposes of trial. The government argued that suppression of all statements was inappropriate, as suppression is a drastic remedy, whereas the statements that the defense demanded be suppressed for cause had been withdrawn. Only the statements that had not been

objected to were active. The government also noted that it was seeking statements made willingly by detainees that have been transferred to Oman and were free of any hint of duress. The defense argued that it was still seeking to suppress all of Al Khazimi's statements, in part because it only now had information on all of the proffer statements. Additionally, the defense asserted that the transfer of detainees to Oman was making the examination of the circumstances of statements difficult and attempts to obtain statements from the same persons in Nashiri's favor almost impossible.

Defense Motion to Suppress Statements made by Nashiri to Other Detainees

Defense's motion (AE 569 GG) to suppress statements Nashiri made to other detainees relied on the testimony or expected testimony of a GTMO psychiatrist from 2006-2007 who evaluated and treated Nashiri's mental state. The motion required a Stipulation of Expected Testimony to be entered in order for the defense to use evidentiary arguments, but the classified nature of the psychiatrist's name and several security procedures included in the stipulation meant that Nashiri was not allowed to read the entirety of the expected testimony. The defense objected to Nashiri having to stipulate to something he had not been able to read, though Nashiri indicated a willingness to do so in spite of not recalling the exact psychiatrist among the many he has seen over the course of his detention.

Once the stipulation was agreed upon, the government argued that Nashiri's statements to other detainees were in no way obtained by cruel, inhuman, or degrading treatment, they were not compelled or coerced, they did not occur in an intimidating atmosphere, and they were not limited or directed by external influence to incriminating topics. The government noted that Nashiri was always free to walk away from his discussions with his recreational partner, and he was free to choose any topic of conversation. The government also asserted that medical and psychiatric treatment were accomplished swiftly and regularly, that Nashiri had stated that he was impressed by the medical care at Camp 7, and that Dr. 1 would have launched an investigation if she had seen anything that was cruel, inhuman, or degrading.

The defense argued that government control of Nashiri's schedule allowing only one hour per day to talk with a non-military person in Nashiri's native tongue was cruel, inhuman, and degrading. The defense also asserted that the detainees' discussions of incriminating topics during recreation was the direct result of government manipulation, and that solitary confinement was a form of degradation that had caused Nashiri continuing psychological harm. However, the government noted that Dr. 1 had diagnosed Nashiri as without any prolonged mental harm and not exhibiting any symptoms of psychological inability to advocate for himself.

Defense Motion to Compel Production of Naval Orders and Deployment

The defense brought a motion (AE 599) to compel production of discovery pages containing naval orders and deployments to show that no formally defined armed conflicts were on-going, much less a conflict that involved Nashiri. The judge noted that over 3000 pages of documents responsive to defense's discovery request had already been provided and questioned the defense on how that counted as an insufficient production. The government stated that further documents were in preparation for release. The defense informed the judge that keywords for orders designating Al Qaeda a hostile force would have been used, so the document search would be narrowly tailored. The government responded that there is no centralized database of DOD orders. Further, Osama Bin Laden's network did not follow the Law of War so CENTCOM's standing orders to its personnel is how existing hostilities would be established.

Another motion (AE 475 J) was set for argument, but both the government and the defense elected to rest on their briefs.

Rescheduling of Pre-Trial Sessions

The judge entered into a discussion of scheduling, given that the continuance of trial preparation until June 1, 2026, led to the cancellation of pre-trial sessions originally set for July and August of 2025. In arranging for motions AEs 621 and 622 to possibly be argued in November or December, the judge sought information concerning any witnesses required to provide testimony. He was told by both sides that no witnesses would be called. The judge also ordered all remaining motions to be filed in September so that they could be ingested in October and heard in November. Anticipating the necessity of pre-trial hearings in March, April, and May of 2026, the judge set the Trial Management Meeting for April 6, 2026. The government noted that motion AE 588 was originally scheduled to be resolved in July of 2025, so the judge questioned both teams and reached an agreement to address the motion in November.

Defense Motion to Withdraw Military Counsel Padilla

Defense Motion AE 339 EEE was the last item on the docket. It concerned an application to withdraw military counsel Padilla from Nashiri's defense team due to the expiration of his service term in July 2025. Nashiri had been apprised and had not objected. The defense team noted that even with the loss of Padilla, it would be capable of preparing for a June 2026 trial date. With these assurances, the judge authorized Padilla to withdraw with the admonition that he did not intend to grant any further withdrawals by either team.

Observations:

The judge has been dedicated to finishing the pre-trial proceedings for Nashiri, leaving a well-ordered trial for the next judge to conduct. He has extended his term of military service several times to achieve this goal. Though the judge did not mention retirement in oral discussion when partially granting defense's motion for continuance of the trial date or in the text of his ruling, he also did not indicate that he would be extending his service. With the extension of the trial date into mid-2026, it seems unlikely that this judge will complete the pre-trial procedures. Any new judge will need to spend additional time becoming familiar with the case, so the defense may yet receive another continuance.

Nashiri maintains a relaxed demeanor in court and occasionally demonstrates his familiarity with the English language. Several times when replying to the judge, he opted to respond to questions in English rather than wait for the interpreter to translate back and forth. On one particularly memorable occasion, Nashiri had been answering the judge's questions with "nam" and waiting for the interpreter to publicly translate his response as "yes," but he abruptly switched to answering the questions with "yes" instead. The first time Nashiri said "yes," the interpreter publicly said "nam," causing Nashiri to laugh for quite some time.

The defense's objection to Nashiri stipulating to something he had not been able to read (though Nashiri indicated a willingness to do so) may reflect either a change in the process of declassification followed by the DOD Security Classification/Declassification Review Team or it represents a portion of the pre-trial process not yet familiar to the lead defense counsel. Throughout the 9/11 Military Commissions and during the early portions of the Nashiri Military Commission, there were multiple instances of the use of classification subheadings such as "For Display to Detainee" or "Releasable to ISN 10015." Documents processed to these subheadings are SECRET or UNCLASSIFIED//FOR OFFICIAL USE ONLY documents that have more content released than would be allowed to the public but less than would be released in a document without the subheading, specifically so detainees can view as much of a given record as possible. Unless DOD's security classification review team no

longer processes documents to those subheading specifications, or the defense neglected to ask for documents processed for Nashiri's viewing, Nashiri should have been able to read the Stipulation of Expected Testimony prior to stipulating to it.

The expectation that the Nashiri pre-trial proceedings will not resume until November means that the court facilities on GTMO will remain largely empty throughout the summer months. The 9/11 Military Commissions cannot proceed unless the defense for the remaining KSM defendant, Ali/Baluchi, who is not a party to the plea deal, has motions before the court. The remaining three KSM defendants still await resolution of their plea agreements.