

Military Commissions:
ISN 10019
Encep “Hambali” Nurjaman
Pre-Trial Hearings Week of June 23-27, 2025

Events:

The defense team and other personnel were predicting that the June 23-27 pretrial hearing week for ISN 10019 Encep “Hambali” Nurjaman (Nurjaman) would be canceled or only run through the morning of the first day. Instead, a mixture of open and closed sessions resulted in a full week of pretrial hearings. The first day was observed at Ft. George G. Meade by representatives of the EFE Spanish newswire service and Judicial Watch. However, only Judicial Watch’s representative was present for the remainder of the week’s sessions. Proceedings were held in the Remote Hearing Room (RHR) on island with members of the trial (government) and defense teams and began with the usual review, including Nurjaman’s awareness and authorization of the presence or absence of defense personnel attending from the RHR.

The judge then diverged from his normal routine having just learned about the absence of defense team member James Hodes, who had not given notice of his expected absence until the end of May. Hodes had been slated on the docket since late 2024 to not only defend Nurjaman in this hearing but to provide witness testimony. The judge expressed puzzlement and a degree of irritation that counsel had not complied with his docket order. The government trial counsel and defense counsel gave oral explanations that indicated Hodes' lack of attendance stemmed from a budgetary problem. The government held that since Hodes was a member of the defense team, it fell to the defense team to work through the Military Commissions Defense Office (MCDO) to obtain travel funding and vouchers to get Hodes to GTMO or the RHR. The defense held that since Hodes would be functioning as a witness, it was the government's responsibility to pay for and provide all transportation to Hodes. The two teams had been unable to agree on any precedents or the authority of competing procedural documents in the matter and placed it before the judge for a determination.

The judge examined the documents overnight and made a non-precedential ruling on the second day indicating the government was to arrange Hodes' transportation for the week and have him in place to testify on Thursday. Hodes' testimony was scheduled for a closed session out of an abundance of caution. The defense team requested the judge’s authorization for Nurjaman's attendance at the closed session, but the judge denied it on the basis that he did not have the legal authority to permit it. On Wednesday, the defense team informed the judge that Hodes would not be able to attend and give testimony on Thursday because he was the only available caretaker for a family dog which was undergoing surgery. Hodes' testimony was immediately rescheduled for the September pretrial hearings, and the judge advised the government it was responsible to pay his transportation costs. Oral arguments followed the Hodes discussion for other procedural problems and AEs.

Motion to excuse or retain defense counsel LT Hirschler

The initial oral argument continued from the last Nurjaman pretrial week concerning the accused's continuing refusal to excuse defense counsel LT Hirschler, who had been reassigned to other legal postings at a time when civilian defense team members were also in transition. Hirschler gave testimony from the RHR about his current duties with “Code 20,” a program in the JAG Navy Criminal Defense organization, his decreasing relevance to and familiarity with the Nurjaman defense, and his discussions with his supervisor who had determined that current duties would be impossible to combine with duties related to Nurjaman's defense. Hirschler proposed that a hybrid work posting could be

created for him at the judge's order but also noted it would present a burden to become current on the Nurjaman defense again and additional time would be required to reacclimate after a reauthorization of necessary clearances. He concluded by stating that there seems to be no legal precedent to argue for his own removal since defense usually has to argue to remain assigned to a military commission trial, but he assessed that his own removal would be best. The government also argued for Hirschler to be fully excused from the Nurjaman proceedings on the basis that the defense team was fully competent to defend its client. The defense team argued for Hirschler's return, as Nurjaman wanted Hirschler and Hirschler represented a resource of archival experience in the defense of the detainee.

Defense motion to compel the provision of a mitigation expert

The defense brought a motion (AE 0101.003) to compel the provision of a mitigation expert for the defense, arguing that none of its members were experienced in developing mitigation plans for this kind of case. All of its members were currently focused on evidence and trial matters and any splitting of focus to also cover sentencing phase mitigation risked damaging their ability to defend Nurjaman. Further, the chosen mitigation expert would provide a more-than-two-years continuity into the future as detailed defense counsel could be expected to be reassigned. The chosen mitigation expert would also possess special training in listening, communication, and the development of a whole psycho-social picture of the defendant's life. The defense asserted that refusal to appoint a mitigation specialist would produce a fundamentally unfair trial that would risk being overturned by a higher judicial authority.

The government asserted that the defense had not proven a fundamental unfairness existed and that since the Nurjaman case is not a capital case, no mitigation expert is ethically required. The government argued that since the evidentiary presentation trial phase and the mitigation-impacted sentencing phase are two separate trial phases, it would be possible for the defense to establish both plans and is competent to do so without adding a mitigation expert. The defense stated that to be competent to conduct mitigation efforts as well as the evidentiary and merits efforts, the team would have to undergo extensive and potentially expensive training and would need to seek out the specialists to train them. As such, hiring a mitigation expert would be more cost-effective. The government concluded oral argument by suggesting that the defense team could hire the proposed mitigation expert to train them.

Defense motion to remove restrictions on award of pre-trial confinement credit

The defense brought a motion (AE 0103) to remove restrictions against the award of pre-trial confinement credit arguing that the Secretary of Defense has neither the power to restrict pretrial confinement credit, nor the power to instruct judges on how to rule, as there is no plenary power in the Military Commissions. The defense also stated that pretrial confinement restriction has already been struck down in the case of Hamdan, and that ruling that pretrial confinement credit is not restricted does not necessarily mean that the judge would have to grant the credit.

The government countered that the concept of pretrial confinement credit originates in matrices outside of the Rules for Military Commissions (RMC), so there is no basis for it, and that Congress did give the Secretary of Defense plenary authority to establish rules for the commissions. The government also noted that, if pretrial confinement credit were to be assumed viable for Nurjaman, he would have to be in pretrial confinement as a punitive measure. Detainees currently confined in GTMO are confined under the Law of War (LOW) because they have been evaluated to be threats that might murder U.S. citizens. This renders Nurjaman's current confinement a matter for mitigation, not a matter for judicial sentencing.

The defense responded by stating that a DOD-I specification about confinement makes pretrial confinement credit valid in the commissions. The defense then reiterated and insisted that Congress did not give the Secretary of Defense plenary authority.

Classified Defense Motion (AE 0106) Concerning the Use of Shackles on Nurjaman

Defense's Motion (AE 0106) concerning the use of shackles on Nurjaman was largely classified. Before defense could argue the motion, Nurjaman was required to agree to a particular stipulation of facts. When the judge examined Nurjaman for his understanding of an agreement to the stipulation, significant confusion slowed the process. The defense team spent some time in court explaining the facts to the detainee through the court interpreter. Prior to Nurjaman ultimately agreeing to the stipulation, the judge used the time to consider defense's motion to allow the accused to attend the closed session and announcing his denial of the motion because he did not have the authority to override security. The commission then went to closed session.

Open and Closing Arguments on final day of open sessions

Very limited open and closing arguments were heard on the final day of open sessions. The defense held that using shackles on the accused constitutes pretrial punishment and stated that if the judge is not willing to order a change in Joint Task Force Standard Operating Procedures to prevent the practice, the judge should issue sentencing credit to Nurjaman.

The government countered by providing documentary evidence of Nurjaman's penchant for caching contraband, such as bottled vitamins and other small objects, to explain the necessity of shackles as a safety measure for detention personnel and attorneys. The government further noted that the use of shackles under these circumstances aligns with other military detention operating procedures. Further, the judge has the authority to modify the use of restraints in one meeting area, and the defense has rejected offers to facilitate meeting unrestrained as long as a transparent barrier prevents Nurjaman from reaching his attorneys. According to the government, restraint under these circumstances clearly does not constitute punishment. The defense insisted that the contraband bottled vitamins were a supplement they provided through proper procedures and as such shackles given for this reason is punitive.

The judge provided one update on a separate AE that was discussed in an 802 closed hearing, stating that the commission would be requesting more clarification on the issue from the parties. The AE may have been the motion (AE 0109) concerning the release or concealment of the names of government personnel, but discussion was not clear.

The military judge recessed the commission until September 2025 with the determination that he would provide written rulings on each of the AEs argued and once again reminded counsel that he expected to see Hodes as a witness at the next hearing.

Observations:

LTCOL Wesley Braun, the military judge for the Nurjaman hearings, has maintained an admirably even temperament during all previous observed hearings. During this hearing, however, he grew visibly irritated while discussing Hodes' absence. If contempt of court was a function of the military commissions, multiple members on both teams and Hodes himself might have been found to be in contempt. All observers expressed disbelief that travel arrangements had not been resolved far in advance and some questioned the veracity of Hodes' final excuse for not attending.

References to Law of War detention during the AE 103 argument also drew upon and partially explained the Periodic Review Board (PRB) procedures and their purpose. The government team was unexpectedly familiar with the process, while the defense team may not have been as familiar because their arguments did not address any of the complaints private counsels regularly make to a judge during a PRB hearing, such as asking detainees to incriminate themselves. This could impact the judge's view insofar as Nurjaman's confinement being pretrial versus Law of War in nature.

Nurjaman appeared to be in good health and remained attentive throughout the proceedings. He wore a suit jacket and button-down shirt each day and had recently dyed his beard with henna. He responded in English when simple words or phrases like "yes" and "no" were appropriate, but he resorted to his own language when attempting to explain more complicated positions. Nurjaman may be the most respectful and engaged detainee currently undergoing military commissions.