

Military Commissions:
ISN 10015
Abd Al Rahim Hussein Muhammed Abdu Al Nashiri
Pre-Trial Hearings November 17-21, 2025

Events:

Day 1, November 17

The November 17 hearing was delayed until 12:03 p.m. due to classified (802 and 505) closed-door hearings and additional time was needed to recalibrate the audio-visual (A/V) feed on GTMO and the mainland. (The hurricane that recently struck GTMO flooded their new A/V equipment, requiring legacy equipment to be hastily reinstalled on both ends to enable coordination between the courtroom and the Remote Hearing Room (RHR).) And an additional remote observation location had been activated in Long Island, NY, with two new counsel appearing on behalf of the government (prosecution) team, who were required to place their credentials on record.

The judge proceeded to summarize the 802 sessions that occurred since the last hearing. He then reminded personnel they must appear in the courtroom on island unless granted prior authorization to attend from the RHR. At that time, Ms. Miller, Learned Counsel for the defense, brought an oral motion for continuance of the proceedings due to a pulmonary embolism that prevents her from flying to GTMO. The government argued that the RHR, as an extension of the well of the courtroom, is a proper location for the appearance of defense and government counsel, so a continuance was not necessary. Defense counsel countered that when appearing from the RHR, all conversation between ISN 10015 Nashiri (Nashiri) and any counsel at the RHR must take place over a secure video conference, and that arrangement is wholly inadequate. The judge ultimately ruled that the proceedings would go forward but chose to take the arguments under advisement regarding any future issues confining counsel of either side to the RHR.

Discussion then turned to rearranging the week's planned schedule to allow a defense-appointed medical examiner to see Nashiri, during which the defense appeared to accuse the judge of intemperate or ill-tempered behavior toward the defense. The judge took the government and defense counsel's proposed schedules under advisement and placed the commission in recess at 1:28 p.m., to reconvene at 9:00 the next morning.

Day 2, November 18

The commission came to order at 9:00 a.m. on November 18, with significant static and pixelation on the observer feed. Similar problems on the feed between the courtroom and the RHR led the defense to object to proceeding with the day's plans until all A/V problems could be resolved, but the judge elected to overrule the objection.

Defense Motion AE 674

The judge then admonished all of the lawyers to do their work outside of docketed time and to be prepared for court proceedings. The defense noted that it had done as much preparation as possible, but the government shutdown had canceled investigative travel to the Middle East that might have turned up witnesses to exonerate Nashiri. And since February marks the start of Ramadan, travel approvals requiring 60-day lead times would not be helpful at this time. Although the judge did not respond to this complaint, he did segue into his plan to deny a motion to abate (AE 674) as moot because of the

government shutdown, since the government is once again functioning. He noted that he had been through four such shutdowns during his time in uniform, and that he is cognizant of their impact and so has been granting relief for anyone requesting not to travel or, particularly, to use the RHR. He then ruled from the bench denying the AE 674 motion, promising a written ruling later.

Defense Motion AE 227

Discussion then moved to defense's motion AE 227 concerning the use of questionnaires versus voir dire for the choice of trial panel members and written arguments to the contrary that asserted that voir dire was a suitable method but used "fulsome voir dire" and "extensive voir dire" interchangeably, where those terms are considered to have different definitions. Although the defense stated he planned to withdraw the motion, he wanted it on record to prevent future claims that its concerns were not addressed. It was resolved that the government and the defense would work together to create an agreement to proceed under a particular term's definition.

Defense Motion AE653

The defense then brought motion AE 653 to exclude all statements that Nashiri made to the Combatant Status Review Tribunal (CSRT) on the basis that they were "statements made in the course of plea discussion." The defense defined the CSRTs as an "alternate procedure for release," making it a plea discussion that either allowed the release of a given participant, or the continued incarceration of that participant. The judge queried how the CSRTs could be an alternative procedure, when it was the only procedure functioning at the time.

The defense argued that the Military Rules of Evidence encompass prior-to-charges discussions as alternatives to post-charging procedures. The judge asked if, given that the CSRTs were about status and many alternative release procedures are based on conduct, there is a difference between status tribunals and conduct-based tribunals. The defense responded that the CSRTs were both status-based and conduct-based, which led the judge to ask if military commissions are not conduct-based, how a status-based proceeding would be an alternative to a conduct-based proceeding. He also asked how a CSRT could be seen as "in lieu of" military commissions, when the CSRT established the jurisdictional status of the military commissions over the detainees to be charged. The defense did not answer the first question but contended that Military Rule of Evidence 410 indicates that "in lieu of" is not necessary for defining alternative procedures.

The government chose to argue on the basis of Military Rule of Evidence 420 allowing the admission of CSRT statements because they were made voluntarily. The government also noted that since the CSRTs authorized some releases based on determinations of participants' enemy or non-combatant status but did not allow for the offer of a plea to avoid or escape additional charges, they do not meet the definition of a plea discussion. Possibly, it was not even a discussion, the government contended, because there was no offer of exchange. The government also held that since the CSRT determined status and not guilt, it could not be considered an alternative to the military commissions.

The judge made no rulings and recessed the commission for lunch.

AE Motion on the status of expert consultants

Arguments after lunch concerned the status of expert consultants and whether the government or the defense had a better claim on particular expert consultants. Unfortunately, signal fluctuations causing cascades of technical difficulties prevented observation of these arguments.

AE Defense Motion to exclude some evidentiary items

The following AE defense motion was brought to exclude some of the government's evidentiary items, because the precise notice of what the government would be using from a 488-page document was not provided. Further, translations of documents to be used were supplied without the original Arabic documents, or translations were supplied with the interpreter and date of interpretation redacted. The judge showed reluctance to exclude this evidence and asked for a less drastic remedy. The defense suggested the deadline for the defense to submit an evidentiary list be extended and for the government to be penalized for non-compliance in submitting an evidentiary packet. The judge concluded that his order for the creation of the evidentiary submission packets was unclear, and that the government had supplied the evidence from a discovery posture (favoring wholeness of document) instead of a trial posture (favoring precisely what would be provided to the fact-finder), so directed the government to provide more clarity and also originals in addition to translations, and adjusted the defense response deadline.

Final AE Defense Motion

The final AE motion argued on Tuesday was 655, which was a defense objection to the government inclusion of a 20-minute Arabic video and two hour-long Arabic videos, as well as one photograph, in the evidence the government intends to use in trial. The government noted that the hour-long videos are martyrdom videos by the suicide bombers that crashed into the U.S.S. *Cole*, so the whole of each video is directly relevant, but admitted no intent to use the entirety of the 20-minute video. The judge directed the government to edit the videos and to provide the edits to the defense. The judge recessed the commission until 9:00 a.m. the next day.

Day 3, November 19

Defense Motion AE 588C

The commission came to order at 10:30 a.m. on November 19 and began with discussion of a split burden of proof on AE 588C, which was a motion to dismiss the charges based on improper timing in the establishment of privileged or unprivileged belligerent status.

Government's Rebuttal

The government opened arguments by noting that the defense motion appears to concede that Nashiri held membership in al-Qaeda, and that al-Qaeda was comingled with the Taliban. Neither organization is afforded privileged belligerent status. Al Qaeda is a non-state actor. The government asserted that prisoner-of-war status immunity does not extend to non-international armed conflicts, as a conflict with al-Qaeda necessarily becomes. The government also noted that no known nation affords al-Qaeda or the Taliban a privileged combatant status, as unprivileged enemy belligerents do not get prisoner-of-war or combatant immunity status.

Further, the conflict in Afghanistan was not a conflict between nations. The Taliban and al-Qaeda neither required or employed a uniform, which is against the Law of War, and deprives their fighters of any argument for combatant immunity. By Article III, both the Taliban and al-Qaeda are non-international armed conflict bodies subject to the rules of militias and volunteer fighting forces. Those forces lose immunity and become illegal combatants if they do not use easily identifiable markings or choose to fight in civilian clothes.

Additionally, the government noted that since Nashiri was working in Aden, outside of Afghanistan, he could not be part of any indigenous force and would not be covered if the Taliban were to be considered a militia.

Defense Response

The defense argued that the military commission has no jurisdiction because there was no conflict at the time that the MV *Limburgh* was attacked, which Nashiri is charged with, and that since he was only captured after the U.S. “invasion” of Afghanistan, his status should reflect the time of his capture, not prior operations.

The defense also held that the U.S. president announcing a blanket revocation of prisoner-of-war status at the time of Nashiri's capture was invalid, as such a status is to be determined on an individual basis to be legal. It noted that different government policy memoranda and documents call the Afghanistan “War on Terror” an international armed conflict, a non-international armed conflict, and neither international nor non-international, rendering a status determination achieved by a convenient picking and choosing.

The judge made no ruling on AE 588C.

Defense motion AE 624

Next, the defense brought motion AE 624 to exclude all of the Al Darby Deposition based on the D.C. Circuit Court of Appeals writ of mandamus to vacate all orders by the prior military commissions judge, Air Force Col. Vance Spath. The deposition was ordered and taken by Judge Spath, and when Judge Acosta, the subsequent military commissions judge was presented with the opportunity to affirm or deny the legality of the order for the deposition, he declined to make a determination because the deposition had already been taken, so an order either way would be moot.

The defense argued that the lack of affirmation rendered Judge Spath's order to take the deposition vacated, so any fruit of the order would have to be similarly discarded entirely. Additionally, the defense objected to the use of the deposition because the defense never cross-examined Al Darby.

The government argued that the defense had never been completely against the deposition of Al Darby and had simply asked for more time to review. Additionally, Judge Spath had repeatedly offered Al Darby for cross-examination prior to the detainee's repatriation. The government also held that Judge Acosta had affirmed the deposition order as lawful not by reaffirming it, but by reviewing the deposition and renewing the seal that Judge Spath had placed on it, rather than removing the deposition from the record.

The government's closing argument concerning vacatur was an assertion that this decision was not yet ripe for consideration because the transcript would only be requested if Al Darby himself was unable or unwilling to appear as a witness at Nashiri's trial. Government arguments regarding the voluntariness of the statements in Al Darby's deposition focused around the lack of similarity between Bagram and GTMO, so Al Darby's memory of his Bagram experiences would not be triggered by a deposition at GTMO, and that statements that are identical between times when they were coerced and times when coercion had long been attenuated are not necessarily untrue.

The defense opted to make its responsive arguments at a later date.

The judge then recessed the commission until 9:00 a.m. the following day and ordered that the detainee Bahlul be brought to testify as a witness first thing in the morning.

Day 4, November 20

Witness Testimony of Ali Hamza Ahmad Suliman al Bahlul (Bahlul)

The commission came to order at 9:00 a.m. on November 20. The judge spoke briefly with an attorney who claimed to represent Bahlul. Bahlul had served as Osama bin Laden's public relations manager and was convicted by military commission for conspiracy, solicitation, and material support of terrorism. In spite of Bahlul's insistence that he was representing himself, the judge proceeded to call Bahlul as a witness.

While waiting for Bahlul to be brought to the courtroom, the defense and the government continued to argue the voluntariness of the Al Darby deposition statements. The defense was alleging there was an inappropriate relationship between Al Darby and the FBI because FBI agents brought tea and dates as snacks. The government declared there had not been any improper contact by the FBI and asserted that all statements taken by the FBI prior to later deposition were compared to other known data to determine truth through corroboration.

The judge recessed the court for twenty-five minutes to allow for the arrival and seating of Bahlul. The commission came to order with Bahlul sitting at the front defense team table. The defense team moved to the third and fourth tables to accommodate Bahlul's request to not testify from the witness box.

After several technical difficulties, the judge began with several questions for Bahlul. Bahlul repeatedly thanked the judge and also repeatedly refused to answer the judge's questions. Bahlul attempted to lecture the judge and the commission staff on the nature of testimony in his religion, drawing a distinction between testimony to a human court and testimony before Allah. He then indicated there was another reason for his appearance, which was something "bigger than Nashiri." Ultimately, Bahlul was allowed to give his testimony while not under oath, although the judge reminded Bahlul, the prosecution, and the defense that he would have to judge for any legal weight, rather than assuming the testimony to be true.

The prosecution began direct examination. Bahlul refused to answer questions as asked, instead declaring how he was not going to talk about his tortured or non-tortured experiences under interrogation. He claimed he was always in control and had been manipulating his interrogators and the White House and heaping abuse upon the prosecution and Americans in general.

Under cross-examination by the defense, Bahlul often answered the questions as asked but still refused to talk about any tortured or untortured experiences in interrogation, and repeated assertions that he had been in control and manipulating his interrogators and GTMO guard staff. Several security violations occurred during defense cross-examination that required the feed to be censored and cut. When the government began redirect, Bahlul avoided answering all questions as asked and returned to insulting the prosecution and even the commission. After the government indicated that examination was at an end, at approximately 5:54 p.m., the judge placed the commission in recess until 9:00 a.m. the next day.

Day 5, November 21

Witness Testimony of Former Special Agents, McFadden and Drew Libe

The commission came to order at 9:00 a.m. on November 21 and almost immediately moved to the examination of former Special Agent McFadden, who has appeared before this commission previously.

McFadden testified that the statements that Bahlul had made identifying Nashiri and his activities had not been forced from Bahlul either by torture or through the use of bribes in the form of gifts of tea and dates.

At 10:15 a.m. McFadden departed and Special Agent Drew Libe, formerly of the Naval Criminal Investigative Service (NCIS), began testimony. Libe explained that he had been one of the investigators that the Yemeni government worked with after requesting investigative assistance from the U.S. government to establish what happened when an apartment unexpectedly exploded and its two occupants died. He identified the two deceased men in both investigative photographs and in recovered falsified identification documents, as well as plastic explosives, TNT, grenades, and other incendiary materials hidden in boxes of pomegranates within the apartment. Nashiri was shown to be connected to the deceased men by later investigation involving tracing of funds and falsified identity records. Though interrupted by a two-hour lunch recess, Libe's testimony concluded at approximately 2:30 p.m. The judge placed the commission in recess until December.

Observations:

Nashiri spent much of his week observing from an alternate room. When making an appearance in the courtroom, he appeared to be in good health but was often observed twisting, tapping, and slumping in his chair. The restlessness may indicate he is still receiving Adderall to counteract the Dramamine administered for comfort during transportation from his confinement.

Distrust and ill will seem to have grown between the prosecution and the defense. Though several motions were resolved or rendered moot by discussion between the two teams during this session, both teams accused the other of deliberate action to unfairly disadvantage them before the eventual trial factfinders. The government even speculated that the defense might take advantage of the commission's lack of contempt powers in order to delay the trial by walking out on the first day of the trial.

The most contentious subject of this week's hearings was the admissibility of the contents of the Al Darby deposition. The commission brought in Bahlul to testify as to the conditions of his confinement in 2002.

Bahlul is currently serving a life sentence on terrorism-related charges in connection with Osama bin Laden. He is an ardent believer in the Al Qaeda ideology and is best known for running the propaganda department. He was captured on his way into Pakistan when fleeing from the battle at Tora Bora. Though, like all detainees, his words are presumptively classified Top Secret, he was given the opportunity to testify in open court.

He displayed deeply narcissistic behaviors and was self-aggrandizing in his testimony. He claimed that throughout the entire time he had previously been interrogated and interviewed, he had been manipulating the interrogators to exert influence over the U.S. President and cabinet personnel. Bahlul initially tried to lecture the commission about the importance of testimony, making very clear that testimony before a court and testimony before Allah were separate in his mind. According to the Al Qaeda reading of the Qu'ran, and that of similar organizations, Bahlul was not only allowed to lie to courts composed of non-Muslims but was encouraged to do so.

The government and the judge initially gave Bahlul a choice between taking the standard oath or an Islamic oath before the sharia court. An Islamic oath would have rendered Bahlul obligated to tell the truth within the commission, as he would be testifying before Allah. When the government and the judge determined to forego the oath, this permitted Bahlul to lie and disrespect the commission, and he

took full advantage of the opportunity. Most of the information that the government was able to gather from its direct and redirect examinations came through repeated questions, which resulted in Bahlul distractedly answering a prior question when dissembling about the current one. Most of the information that the defense was able to gather from its cross-examination came through appealing to Bahlul's ego and playing to his claims of being a masterful manipulator. Ultimately, Bahlul's appearance before the commission was largely fruitless. The judge is unlikely to give much legal weight to Bahlul's testimony, and it may have no bearing on his eventual determination about the admissibility or inadmissibility of the Al Darby deposition testimony.

With the approach of the trial date set for late 2026, classified forms of evidence appear to be relaxing. During former Special Agent Drew Libe's testimony, several photographs of persons, pocket litter, and collected munitions were shown to the gallery and the public, as the witness identified them. These photographs and others like them have previously been shown only to the commission and the witness and withheld from the public. This may reflect organizational changes occurring over the long duration of pre-trial proceedings or it may reflect changes enacted during the current executive administration. It could also be part of the government trial team's strategy of prosecution. The photographs have not been unsealed within the commission record, so remote hearing observation remains the only way to view these exhibits at this time.