

***Military Commissions:***  
**ISN 10019 Encep “Hambali” Nurjaman**  
**Pre-Trial Proceedings,**  
**Week of January 26-30, 2026**

*Events:*

The week of January 26-30, 2026, was complicated by a heavy snowstorm in the national capital region, which restricted access to the Remote Hearing Room (RHR) and multiple observer sites. The ISN 10019 Encep “Hambali” Nurjaman (Nurjaman) pre-trial commissions proceedings convened at 9:00 a.m. on January 26, 2026, for a day of closed session argument to accommodate federal government closures in Maryland, the District of Columbia, and Virginia. No transcript of the closed sessions has been released.

The commission came to order at 10:00 a.m. on January 27, 2026, for a brief open session. This open session was not telecast to remote observation locations because the federal government in the national capital region remained closed, and Fort George G. Meade was at limited operating capacity. The judge began the session by informing the accused of his right to attend his pre-trial proceedings and obtaining his permission to continue closed session arguments with two members of his defense team not in attendance. With Nurjaman’s consent, the judge recessed the commission and conducted closed sessions for the remainder of the day. A transcript of this open session has been released.

On January 28, 2026, attorney-client meetings occupied the courtroom for part of the morning, and the judge called the commission to order in open session at 10:09 a.m. The remote observation site at Fort Meade was made available to the public, though ongoing inclement weather and snow-clearing operations rendered the site understaffed due to dangerous automobile and pedestrian conditions. The judge announced he would hold open sessions that day to finalize motions (AEs 129, 123, 124, and 125) argued in closed session over the previous two days.

**Defense Motion AE 129 for information to conduct further investigation**

Defense motion AE 129 requested information necessary to investigate a subject of a sensitive nature. The defense successfully avoided disclosing the subject in open session, focusing on responding to the government’s claim made in closed session that its need to investigate was speculative. The defense argued that speculation was necessary for investigation, but its planned investigation was not just speculative, since there was a significant likelihood of uncovering exculpatory evidence or information. The defense also objected to the contention that it could request all of the information it sought in discovery from the government because some of it fell under national security privilege claims. The government responded that the defense appeared to be arguing against classification and for the ability to conduct interviews regardless of sensitivity. The government also believed the facts at issue in the motion were not yet ripe for consideration. The defense rebutted that the facts needed to be gathered for witness examination, and the determination of which facts are relevant requires investigation of all of the facts.

**Defense Motion AE123 to impanel judgment members in random order**

Defense motion AE 123 requested the impanelment of judgment members and alternate members to be accomplished in a random order. According to the defense, this would comply with the most recent versions of the Uniform Code for Military Justice and Manual for Courts Martial, as well as the Geneva Conventions. It is not in contravention of the Rules for Military Commissions because that document has no directions on impanelment procedures. In response to a question from the judge, the defense

noted that there is no binding precedent to cause the judge to shift to impanelment in a random order, when this procedure is not dictated by the Rules for Military Commissions 911.

The government countered that selection of the judgment panel pool is already conducted in compliance with the Fifth Amendment. The government also pointed to a 200-year history of not impaneling in a randomized order as continually being upheld as a fair military trial procedure countering defense's assertion that there is no block on implementing the method. Further, the executive and legislative branches made specific changes to the rules and manuals to cause randomized selection, but no such changes were made to cause randomized impaneling. The government also pointed to wording in civilian statutes indicating that randomization is for defendants who are eligible for trial by jury, and the judgment panel is not a jury.

In rebuttal, the defense argued that 200 years of a tradition does not make that tradition good.

### **Defense Motion AE 124 to require panel verdict to be unanimous**

Defense motion AE 124 requested unanimity for a panel verdict, or, if at a fixed panel size, three quarters of the panel members to concur in order to convict. The defense argued that the Sixth Amendment of the Constitution requires all jury verdicts to be unanimous, otherwise they cannot be considered impartial, and that the unanimity of a verdict is a right of the accused. The defense granted that the military commissions are not Article III courts, so the Sixth Amendment does not automatically apply, but cited findings by military judges during WWII supporting unanimity as an indication of verdict impartiality.

The judge asked how unanimity will address the issue if, as the defense asserted in its argument, all impaneled members have been indoctrinated to see Nurjaman as an enemy? The defense responded that it would only take one member of an indoctrinated panel following the judge's orders to set aside biases to determine if there was insufficient evidence to declare Nurjaman guilty. The defense also asserted that the only reason the current military commissions are not an Article III court is because the government is hiding malfeasance depriving the detainee of his rights to a jury trial requiring a unanimous verdict. If the judge was unwilling to grant unanimity as a requirement, the defense asked for a panel expansion from five to eight members. This way, a verdict passed by a two-thirds majority would be identical to a three-quarter majority and would come from a body more closely resembling an impartial jury.

The government countered that a requirement of unanimity to convict would go against the voting procedures that military commissions panels are directed to follow. It also traced impartiality and a judge's direction for unanimity through the cited documents and noted that impartiality only attached to juries and panels, not to the unanimity of verdict, so it was incorrect to say that unanimity was required for an impartial verdict. The government noted that once again, the current standards have been considered fair for 200 years. And panel member numbers are the discretion of the convening authority with a floor of five members, not a designation of five or eight members dictated by the judge.

The defense, in rebuttal, asserted that the location of the military commissions at GTMO was a deliberate attempt to circumvent the Constitution. Further, the judge would best serve the United States by ruling in favor of the defense because the defense's requests align with the Constitution, and the world is watching these proceedings for signs of U.S. misconduct.

### **Motion AE 125 to dismiss the case on grounds of vague personal jurisdiction specifications**

The parties disagreed as to who bore the burden in this argument. This was resolved with both parties

rejecting the burden and the defense given the privilege of arguing first and last.

### ***Defense Argument on AE 125***

The defense cited Supreme Court rulings that indicate military commissions should not be applied to any groups of persons beyond land and naval forces. If Nurjaman remains considered an enemy of the U.S. but is not recognized as part of a military force, military commissions do not have jurisdiction over him. The defense also stated that the Military Commissions Act failed to define the accused in such a way that would justify such jurisdiction. Additionally, Supreme Court findings on upholding vague laws as unconstitutional apply to the dismissal of the Nurjaman case. As defined in the Military Commissions Act, Nurjaman neither engaged in “hostilities” or the “support of hostilities.”

### ***Government Response***

The government responded that the Supreme Court's prior findings on voiding for vagueness have never been about jurisdiction, but about penal statutes. As such, it does not apply to jurisdiction, and there is no precedent for it being applied to jurisdiction. The Military Commissions Act does not define an unprivileged enemy belligerent or an alien as a crime, so the definitions are not penal in nature; whereas the charges brought against Nurjaman are well defined and are for crimes, so are penal in nature but not vague. The government also contended that the Military Commissions Act does not define “hostilities” in all elements, but it does define the status of conflicts outside of declared war that require military actions and includes non-military persons acting on the opposite sides of these conflicts within the jurisdiction usually covered by land and naval forces. The government addressed the uncertainty of Nurjaman's membership or non-membership in Al Qaeda as not a limiting factor in jurisdiction because completed military commissions have upheld that voluntary coordination or operational interaction with Al Qaeda establishes a group affiliation and conduct of further criminal acts within this affiliation firmly places the accused within the jurisdiction of the commissions.

### ***Defense Counterargument***

The defense responded that the restriction of the “void for vagueness” doctrine to penal statutes was a result of due process origins, but that recent Supreme Court rulings have struck this interpretation down. The defense also reiterated its stance that the military commissions do not have jurisdiction by means of Nurjaman's temporal and spatial separation from the battlefield. The defense holds that military commissions are established for times and situations when Article III courts are not accessible, but the defendant's separation from the areas of his activity means the Article III courts have jurisdiction. The defense concluded that Nurjaman should not be deprived of rights held by citizens and restricted to a military court, because he did not sign up to be part of something that not everybody agrees is a war.

At the end of arguments, the judge took up the matter of former defense counsel Mr. Hodes' continued inclusion in defense counsel lists. The judge stated that Mr. Hodes has separated from the military, is no longer a federal employee, and has been unable to join the defense team or speak with Nurjaman for over 25 months; however, Nurjaman was unwilling to excuse Mr. Hodes from the defense team. Nurjaman confirmed that he had not spoken with Mr. Hodes for over a year. The defense team believes that Mr. Hodes had filed a request for separation from the trial but did not know the AE number. The government indicated it was unaware that the request had even been filed. No ruling was entered, and the judge recessed the commission at 3:57 p.m.

### ***Observations:***

The defense appeared to be making an emotional appeal by characterizing Nurjaman as someone who

has been deprived of legal rights attached to U.S. citizens. This strategy backfired multiple times during this session's arguments. During open session, the judge perceived that the defense was either deliberately accusing him of being unduly influenced by his chain of command or had inadvertently given the appearance of being unduly influenced, so he reiterated his voir dire statements of functioning independently and impartially and invited challenges from all parties. The defense declined to challenge. When the defense argued that the accused had not signed up to be part of an ill-defined war, that sparked a negative reaction among public observers, who noted that victims of the J.W. Marriott bombing had not signed up for any war at all. A repetition of that argument to any judgment board or jury may cause a similar reaction. When the defense asserted that the international community is watching these proceedings, observers responded with irritation because of its irrelevancy to the motion under argument. Although the video feed did not show the judge's reaction, those admonished to impartiality, as the panel members will be, are likely to find such arguments distracting and counterproductive during deliberations.

Some of the evidence applicable to the Nurjaman case has precedent in being admitted in or barred from the Bin Lep and Bin Amin cases prior to their plea agreements. A lot of the remaining evidence may be confined to closed sessions because it will consist of more recent materials with potentially greater sensitivity. That may explain why open session arguments during this hearing week primarily focused on military commissions procedure.

Whenever observed in the commission feed, Nurjaman appeared to be in good health, relaxed, and conversing freely with his defense team. His unwillingness to release former defense counsel Hodes from his case may indicate he is not as comfortable with his team as he appears, or it could be a calculated defense strategy to delay trial or provide grounds for an appeal.

The judge has grounds for removing Hodes for "ineffective assistance of counsel," since he has not been in contact with Nurjaman for over two years. During this time, new counsel have become fully acquainted with the case. For full participation in his own defense, Nurjaman must trust his defense counsel, and his desire for Hodes to continue as counsel may indicate he has greater trust for his former counsel. This problem must be resolved before the case can move to trial. Prior to ruling, the judge will be considering a letter submitted by Hodes petitioning for his own separation.

The snow and ice event that interfered with this week's hearings demonstrated both strengths and weaknesses of Ft. George G. Meade as a public observation site. Budget or equipment problems prevented snow from being cleared from many roads, paths, and parking lots on Ft. Meade, creating safety hazards that interfered with attendance by some observers and some of the contract staff who provide support for observers.

Unlike during hurricane season on island, GTMO was able to continue motions argument in closed session. And the OMC's practice of housing audio-visual technical staff on the base during hearings ensured that the observer feed was always available. However, counsel who remained on the mainland were unable to attend from the Remote Hearing Room on Ft. Meade because it was running at diminished capacity all week. Nevertheless, the OMC remained committed to informing observers of the judge's hearing status determinations as early as possible.