

***Military Commissions:***  
**ISN 10015 Abd Al Rahim Hussein Muhammed Abdu Al Nashiri**  
**Pretrial Hearings**  
**Week of February 23-27, 2026**

*Events:*

**February 23 Commission Hearing**

The pretrial hearings for ISN 10015 Abd Al Rahim Hussein Muhammed Abdu Al Nashiri (Nashiri) on February 23, 2026, were again delayed by inclement weather, which prevented a 9:00 a.m. opening of the remote hearing room (RHR). Though the national capital region was under a two-hour delay, the judge began off-the-record discussions at 10:37 a.m. and called the commission to order at 10:41 a.m., noting that everyone scheduled to attend in the extended well of the courtroom was present. Argument began immediately.

***Government Argument on Defense Motion to Suppress Bahlul Witness Statements***

The government trial team opened argument on defense's motion (AE 627) to suppress all statements made by Bahlul<sup>1</sup> to the FBI and requested that the commission take judicial notice of the findings in *Walker v. Indian River Transportation Company* regarding translation of dates supporting documentation noted in the Islamic calendar to the dates of the daily calendar.

The government based its opposition on the following:

- Bahlul's statements were not obtained through or as a result of torture.
- Defense's arguments based on the Constitution are inapplicable.
- The government has fulfilled all discovery obligations.
- The defense has sufficient means of impeaching the statements through documentary evidence.
- Bahlul may not be available for testimony and impeachment during the trial.
- The statements are both reliable and in the interest of public justice.

Moreover, the government stated that interviewers who took the statements have testified that torture had not been observed, there were no signs of stress or duress or involuntariness to speak, and Bahlul was never in the RDI program.

The government also noted that an appellate court investigated the allegations of abuse that Bahlul has raised and found no supporting evidence. The interviewers also took contemporaneous notes that provided insight and testified that afterward they conducted investigations to verify or refute Bahlul's information. Additionally, several detainees have independently given corroborating reports.

The government clarified that Bahlul's potential "unavailability" for the actual trial was not based on his physical presence, but his willingness to attend and/or to answer questions put to him, as evidenced

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<sup>1</sup>Ali Hamza Ahmad Suliman al Bahlul, a member of al Qaeda, was involved in planning the September 11, 2001, terrorist attacks and is currently serving a life sentence at GTMO for conspiracy to commit war crimes. (<https://www.bing.com/ck/a?!&&p=fcfe71e71e81f6efeb73625ee99b5384347351713d499bacf1bcc4cdfdc43f9dJmltdHM9MTc3NDQ4MzIwMA&ptn=3&ver=2&hsh=4&fclid=3300d0a2-c1f5-69cd-2232-c59cc0ef688e&u=a1aHR0cHM6Ly93d3cuZ292aW5mby5nb3YvY29udGVudC9wa2cvVVNDT1VSVFMtY2FEQy0yMi0wMTE3My9wZGYvVVNDT1VSVFMtY2FEQy0yMi0wMTE3My0xLnBkZg>, accessed March 26, 2026.)

by the unsuccessful attempt to take his testimony before the commission. The government noted that Bahlul's refusal to take an oath was a ducking of anything that binds him to the truth.

#### *Defense counterargument*

The defense responded that government accusations of Bahlul plotting and not telling the truth in court mean his recorded statement is equally unreliable. The defense alleged that the government's opposition to suppressing the statements is to prevent Bahlul from appearing as a witness in the courtroom. This would deprive the judgment panel of the opportunity to evaluate Bahlul's character. The defense further argued for suppression on the basis that the interview contents are not probative, that the notebook that connects Bahlul to Nashiri is not in evidence or discussed in the interviews, and that the interviews are unreliable.

The defense also noted that as much as the interviewers played to Bahlul's ego, Bahlul claimed to have manipulated the interviewers and probably played to their egos. The defense noted discrepancies between times the interviewers stated connecting kunyas<sup>2</sup> with Bahlul, and times the kunyas were documented, and asserted that acceptance of the statements would necessitate both 403 analysis and the calling of interrogators and interviewers as witnesses to impeach the contents.

#### *Government rebuttal*

The government reiterated that the statements to FBI interviewers were corroborated using independent sources and noted that liars do not always lie. Bahlul's claims of lying at a particular time may or may not be true. The judge placed the open session in recess after this argument, directing a closed session for the afternoon.

### **February 24 Commission Hearing**

#### ***Government Motion to include proffers statements taken from al-Darbi***

The hearings began on February 24 around 9:00 a.m. with the government's motion (AE 166L) for inclusion of proffer statements taken from al-Darbi. The proffer statements had not originally been included in the hearsay notice because the deposition taken and filmed before Judge Spath was going to be entered as evidence. However, since the deposition was deemed disqualified, the government needed the less concise proffer statements to present the same information.<sup>3</sup>

The judge asked what impact the late addition of hearsay documents might have on the defense. The government asserted that since the defense team already had the proffer statements containing the same information they were opposing in the deposition, inclusion of the proffer statements would not disadvantage the defense.

#### *Defense counterargument*

The defense responded that it is "still struggling to put together the theory of defense," and that the

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<sup>2</sup> *Kunya* or *Ism-e-Kunya* is a name used by Arabs to honor and respect someone. However, this is a name which is not the person's given name or nickname. (myislam.org, <https://myislam.org/kunya/>, accessed March 26, 2026.)

<sup>3</sup> Mohammed Ahmed Haza al-Darbi pleaded guilty to participating in a 2002 al-Qaeda attack on a French oil tanker off the coast of Yemen and was transferred to his home country of Saudi Arabia to serve the remainder of his 13-year sentence. Al-Darbi agreed to testify against two other Guantanamo detainees as part of his plea deal. (DOD Announces Sentence for Detainee Ahmed Mohammed Ahmed Haza al-Darbi, October 13, 2017, <https://www.war.gov/News/Releases/Release/Article/1342802/dod-announces-sentence-for-detainee-ahmed-mohammed-ahmed-haza-al-darbi/>, accessed March 26, 2026.)

request to include more documents was not the result of new law or new events, so the standard to authorize inclusion was not met.

#### *Government rebuttal*

The government conceded that it would be 100 or fewer days before trial. However, it would ensure that only the parts of the proffer statements aligning with the deposition were included. Further, the government noted that the exclusion of the deposition for Spath involvement was a new event, and given that suppression for judge conduct is unusual, the status of the deposition was in limbo under Judge Acosta. As such, the government argued that an adaptive exception to the hearsay notice is warranted.

#### ***Defense Attorney Carmen's (DA Carmen) Petition to Withdraw as Counsel before Trial***

DA Carmen's petition (AE 339GGG) came before the court at approximately 10:11 a.m., requesting that she be allowed to finish assisting the defense team in trial preparations and depart the defense team before the trial. In her petition, she informed the court that her family had suffered a loss in December 2025, and her pretrial schedule interfered with her family's grieving and healing. She stated that the decision to ask to withdraw has been difficult, because she does not want to deprive the team or Nashiri of her expertise, especially in a capital case. However, her family's needs must come first. She asked to respond to any questions about the details of the matter ex parte.

The defense was divided for and in opposition to the petition, with no opposition by the government.

#### *Defense Opposition to Attorney Carmen's Withdrawal*

The other members of the defense team argued against allowing DA Carmen to withdraw, stating that this was not because they discounted her grief, but because they were unable to find any remedies that would substitute for DA Carmen without significantly disadvantaging Nashiri.

#### *Government's Statement of Non-Opposition*

The government stated that it had no reason to contest DA Carmen's withdrawal but acknowledged the potential difficulties inherent in her departure and offered some case law to review as precedent for making a determination. The government also noted that Learned Counsel Miller and Defense Attorney Manuel would remain and fill the minimum required number of experienced counsel for a capital case.

#### *Judicial Inquiry*

The judge asked the defense team if there were opportunities for DA Carmen to withdraw but retain access to the case to fill a resource counsel role if direly needed – and if the present resource counsel could then move into a position of active trial participation? DA Carmen noted that her understanding was that she would be “undetailed” and be read out of special access program compartments. She also stated that the grief and loss process requires a family move, and having assumed she could withdraw, has already initiated those actions.

#### *Defense Opposition*

The defense team stated that it had already polled its resource counsel, and the barriers to them taking on active counsel will still exist during the scheduled trial. The defense team also stated that, though it is ostensibly exempt from hiring freezes, in actuality it is not exempt. It cannot hire additional counsel even if it thought it could bring a new hire up to speed in time.

The judge chose not to make an immediate ruling and indicated that the situation will not be ripe for a final ruling until May.

***Defense Motion to block evidence of Nashiri's attempts to smuggle missiles into Saudi Arabia***

The motion (AE 646) was brought by the defense to block any evidence of attempts made by Nashiri to smuggle missiles into Saudi Arabia since he had not been charged with that crime, and the introduction of evidence of crimes beyond those with which he is charged is not an admissible way to demonstrate character. Furthermore, smuggling was not necessarily Nashiri's own act, so any evidence or hearsay would essentially be an in-trial accusation. The defense viewed the government's request to include such material as their attempt to connect Nashiri to Al Qaeda and Osama Bin Laden.

***Government counterargument***

The government argued against exclusion of the evidence because it was to be used to show the bombing of the U.S.S. *Cole* was part of a period of ongoing hostilities as announced and partially perpetrated by Al Qaeda. The government agreed that Nashiri had not been charged with missile smuggling, suggesting that the judge could issue a limiting instruction to the judgment panel to ensure they were aware he was not guilty of that act.

***Defense rebuttal***

The defense team responded that a limiting instruction would not prevent prejudice within the panel and asked why, if the words of Osama Bin Laden are intrinsic, Clinton and Bush are denied as relevant witnesses to the defense. The defense also noted that Osama Bin Laden did not claim missile smuggling as an act of Al Qaeda or one involving Nashiri.

***Defense Motion for access to classified materials***

Defense then brought a motion (AE 634F) for further access to documents and discovery that are currently classified, arguing that other military court cases involving classified material are largely withheld because the accused mishandled that classified material. In this case, however, much of the classified material is being withheld because it came from the Yemeni government, which the defense characterizes as corrupt. The defense indicated that the channels of communication between Yemeni and U.S. agencies are opaque and believe that not only is the Yemeni government withholding evidence of third-party guilt, most of the evidence it and the U.S. government have provided are hearsay. The defense then asserted that withholding of information warrants dismissal of the case.

***Government counterargument***

The government asserted that the Yunis Standard requires the government to provide the material *for defense of the accused*, and the government has met those obligations fully.<sup>4</sup> The government stated that no sanctions are appropriate because nothing relevant has been deliberately withheld or is damagingly material to the defense.

Thereafter, it was affirmed that Nashiri was permitted to attend closed sessions when he was the source of the classified material under argument. Further discussion ensued as to whether future argument about AE 680 could go forward if the focus was translation unreliability instead of relitigating voluntariness.

February 24, 2026, commissions hearing went to closed session at 2:30 p.m.

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<sup>4</sup> Emphasis provided verbally by the government and is not reflected in the transcript.

## February 25 Commission Hearing

Open sessions on February 25, 2026, began at 9:11 a.m.

The judge announced two resolutions had been reached outside of commissions time. The first resolution indicated that the names of personnel who participated in the Combatant Status Review Tribunals (CSRTs) were to be considered “UNCLASSIFIED // For Official Use Only.”

The second resolution confirmed that the witness, Brady Pomerino, who would be testifying that day, was comfortable with testifying under his true name. He was then called to testify and would be examined first by the defense, cross-examined by the government, and then redirected by the defense.

Summary of testimony:

<b>Question</b>	<b>Answer</b>
Have you testified before?	No. Pomerino has not testified before.
Have you served as a juror before?	No, but he was a panel member for a drug Courts-Martial in approximately 1996.
Did you receive an e-mail from the defense?	Yes, and a contact from the prosecution during the same week. He did not reply to the defense because he takes his oath of secrecy very seriously and did not have the information readily available to be sure of what he could and could not talk to the defense about in open communication.
Career?	He began in the military in 1992 as a pilot, became a flight instructor, became a part of the Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC), went to the office of the Director of Navy Staff (DNS), and concluded his military career in the Navy Finance and Budget office on August 1, 2014. He is now a Navy civilian, working for Navy Finance and Budget.
Ever deployed to the Middle East?	He deployed to the Middle East from December 1995 to June 1996, February 1997 to July 1997, and in late 1998.
How did the OARDEC assignment come about?	He was assigned a tour of duty in DC in July 2005, only to be selected as the 10 percent of CNO staff to be given up to augment assignments in Afghanistan for UAVs. Since the Afghanistan assignment would be 500 days long, ADM Kilcline diverted him to a 6-month augmentation assignment to OARDEC in Crystal City instead, to not lose staff for the entire assignment. The temporary transfer to GTMO to facilitate the CSRTs was entirely unexpected.
What experiences did you have with Muslim peoples while in Afghanistan?	He purchased home goods, such as carpets, and visited the Gold Souk. There were times that he had tea with Muslims. He did not recall seeing, being involved in, or being a victim of religious violence.
Do you speak or understand any Arabic?	He knows the polite Arabic greetings, but little else.

What were your roles and functions in the CSRT?

He served as a personal representative (PR). He had no role in recommending detainee treatment outside of the CSRT and did not report or present anything when not directly operating as a PR, just collated intelligence for use in the review. He was a PR for Nashiri, Hawsawi, and Zubair and was required to work around their schedules when attempting to meet.

Did you know any of the interpreters or tribunists?

When shown, he identified four exhibit pages as instructions given to him for introducing himself and functioning as a PR. His meetings were attended by either an Arabic or Farsi interpreter. The CSRT sessions were before three tribunists who were not from OARDEC, an interpreter, and a recorder. The interpreters were civilian linguists, though he was not sure if they were government or contracted.

The head tribunist remained the same across all CSRT sessions, so he recognized that tribunist, though others swapped out. He did not previously know the interpreters, he may have known the recorder, and he knew the other PRs who also came from OARDEC.

How did you become PR for those three detainees?

The OARDEC selected cases that he had not previously reviewed, to avoid prejudice. There was no formalized ranking or pecking order in the assignments, and nobody received summaries on assigned detainees before arriving at GTMO. All the reviewed detainees were those detained at GTMO and alleged to be part of Al Qaeda.

How were the linguists assigned?

He had no input into the linguist assignment; they were just assigned to fill need. He believes he could have requested a new interpreter, if he had doubts about the quality of the interpretation. He was completely reliant on the linguist for the exchanges and saw no indications of imprecision in the interpreted conversation. He could not tell the difference between dialects, though, and had no knowledge of either interpreter's first language or nationality.

Where did the meetings take place? Camp 7?

He does not know if he ever visited Camp 7, and he does not recall the name of the meeting or tribunal sites. He only went to the meeting site, the SCIF, and the tribunal site. The tribunal site may have been near detainee housing, because he was instructed to conceal his name while in the area.

How were the meetings with Nashiri?

Nashiri refused the first meeting, and the second meeting was averted by a medical event. He probably met with Nashiri that same week but does not remember exactly because it was complicated by his responsibility for the two other detainees. He did try to write as much as possible in his notes in preparation for future times when people asked him about the meetings.

Were you aware of Nashiri hunger striking or being under discipline? Was he ever brought to a meeting after a forced cell extraction (FCE)?

No, hunger strikes and discipline were not in evidence at the time. He also did not know about FCEs until the defense asked him about them, so he could not say if or when Nashiri underwent forced cell extractions.

Do you recognize these documents?	<p>He identified:</p> <ul style="list-style-type: none"> <li>• A standard form filled out.</li> <li>• Session notes that he stated he took at each meeting.</li> <li>• Transcribed forms based on his session notes.</li> <li>• An evidentiary document from the CSRTs.</li> </ul>
Did your notes come from your own understanding, or was your understanding based on what the interpreter said?	He acknowledged that the comments he recorded from Nashiri in his notes came through the linguist. All changes explained by Nashiri for statements came through the linguist.
Were you aware of the nature of Nashiri's medical event?	No.
Did you consider the people who you were representing threatening or dangerous?	He felt that the dangers were not specific to the detainees, and that any threat he felt was with respect to the detainees being fighters and being incarcerated.
Did Nashiri ever review and sign the notes from your meetings?	No. Pomerino did not recall the notes ever being translated to Arabic for Nashiri's review, and Nashiri did not sign or approve them. The only thing Nashiri signed was the responses to the charges brought against him, after each charge and response were communicated to him and addressed, through the linguist.
Did you receive notes on the meetings or the statements from Nashiri?	No.
What happened to your notes?	He brought them back to the SCIF and put them in the PRs' safe. To his knowledge, no three-letter agencies had access to the safe or its contents.
Did you have any interactions with Nashiri that did not use the interpreter as an intermediary?	There were some interactions with Nashiri in English, because he knows some English, but the interactions were very limited.
Were there any recordings of your meetings with Nashiri?	Pomerino recalled a camera being in the meeting room but did not believe there was a recording. He never saw any transcripts of the meetings.
Did you investigate the truth of the charges or of Nashiri's responses?	No. The PR only collect's the detainee's responses and does not determine the truth.
Does the number "10015" mean anything to you in relation to Nashiri?	No.
Were your notes transmitted or turned into reports, or anything? If so, to whom?	He does not know if or when his notes might have been transcribed, or to whom they were sent, but if so, it was possibly to the leadership of GTMO for formulation of reports to D.C.
Did you have contact with	He does not recall any further contact with the linguist. He did see the

the personnel in these meetings or tribunals outside of the CSRT?

tribunal members at the SCIF or at lunch (it's a small base with limited places to eat). The recorder lived in the same area of GTMO, so incidental contact was inevitable.

How many times did you meet with Nashiri, and who was in the meetings?

He met with Nashiri three times. The meetings contained the PR (himself), the translator, and Nashiri. They all agreed to establish a rule of nobody talking over each other.

Did you have any reason to question the quality of the translator's interpretation?

No. Responses through the interpreter were responsive to the questions Pomerino posed to Nashiri.

How was Nashiri's response to the charges crafted?

Pomerino read the charges document to Nashiri, the translator translated Pomerino's words to Nashiri, Nashiri crafted responses to the translator, and Pomerino took notes of what Nashiri said according to the translator. Pomerino wrote up the response document. Pomerino read the responses to Nashiri point-by-point, the translator translated Pomerino's words for Nashiri, and Nashiri responded through the translator with corrections. Pomerino revised the response document and would have brought it to Nashiri for approval, but he does not recall when that was, only that it was probably not the same day.

When did you meet with Nashiri?

He was not able to remember exact dates and times, but it was all after the 20<sup>th</sup> of February of that year. He noted that he signed in and out on a log sheet, so there should be a record of if and when he met with Nashiri.

“How would you know that your question going through the same translator got an accurate response back?”

He asked his questions several times and in multiple ways and held long discussions about the changes that Nashiri wanted to make, so Pomerino hopes he would pick up on problems with the translation. He supposed it was possible that the interpreter could have come in with an agenda and falsified the responses, but indicated that it seemed unlikely, given the level of complication.

Who determined the meetings?

He only met with Nashiri when Nashiri showed up. He was already at the meeting site whenever he learned that Nashiri was not going to be coming to the meeting.

How were interactions with Nashiri?

Cordial.

What responses needed to be changed in the document?

Pomerino did not define any particular responses, but he noted that different responses were revised, depending on the day.

Was there anything that guaranteed the interpreter was translating correctly?  
Did you go back and check?

No, he just assumed that the interpreter was translating accurately.

After excusing Brady Pomerino for all witness testimony concerning motion AE 680, the judge stated that Mr. Pomerino would be called again at a later date to provide testimony on a different AE.

The judge then informed all counsel that a document written in Arabic had been found outside the courtroom on February 24, 2026. The document had been sufficiently translated to appear to be

attorney-client correspondence and was therefore contained in a sealed envelope with writing across the flap. The judge expressed the commission's intention to turn the document over to the defense with the caveat that if the defense realized it wasn't their document, they would turn it back over to the government for investigation. The government trial team expressed willingness to discuss the conditions surrounding discovery of the page with the defense team, if desired.

The judge stated that the next day's hearings would be given over entirely to closed sessions beginning at 9:00 a.m., and the final day of hearings on February 27, 2026, would be held in partially open and closed sessions.

The judge then recessed the commission for that day at 1:50 p.m.

### **February 26 and 27 Commission Hearings**

Observers arrived by 9:00 a.m. on February 27, 2026, to learn that hearings would be held in closed sessions all day. This had been determined late the previous day and only communicated to several supervisory contractors. It had not been communicated to observers, audio-visual technicians, or facilities staff.

#### *Observations:*

The February 23-27, 2026, week of pretrial Nashiri hearings were attended by a member of the press and an observer from Judicial Watch.

Since members of the press are allowed to retain electronics in the press observation room, the defense team received near-real-time notification of signal anomalies observed at Ft. Meade. The defense mentioned the anomalies to the judge more than once and characterized the observation situation as bad. The signal interruptions were actually infrequent, compared to prior weeks. Audio-visual personnel went to the public and press observation rooms to determine if any further adjustments could be made.

Of particular note, learned counsel for the defense, Allison Miller, attended the commissions hearings from the courtroom on GTMO. Learned Counsel Miller had previously been attending from the Remote Hearing Room (RHR) in the states due to an embolism that had developed in her leg for which she was undergoing treatment. This embolism became the centerpiece of several motions for continuance or delay of the upcoming trial due to inadequate medical facilities on GTMO. She had argued that her inability to travel to the island prevented her from meeting with Nashiri in person and, as a consequence, the case could be subject to an appeal or a reversal of trial results on the basis of ineffective assistance of counsel. Her embolism treatment was not scheduled to be completed until April 2026 at the earliest. Her in-person presence at GTMO and her embolism were not discussed during this pretrial week, so the reasons behind learned counsel's in-person attendance in the courtroom are not clear. It was, however, revealed in December, during the government's cross-examination of Learned Counsel Miller's expert witness, Professor Wendell, that she was involved concurrently in another capital case in the Virgin Islands. As such, it seems possible that she may have been flying to attend to a client in a different case even as she refused to fly to GTMO.

Also of interest during this pre-trial week was the defense team's opposition to co-defense attorney Carmen's petition to withdraw as counsel before trial. She told the judge she recognized the difficulty this presented to the team and was willing to stay through trial preparations. At the same time, she indicated her family had been unable to properly grieve, and she had come to a decision that her

family's needs must come first. Her testimony came across as both honest and sincere in her need to withdraw, as well as her willingness to help out where she could before trial. Learned Counsel Miller responded that although she did not want to deny her co-defense attorney the ability to mourn, she had no choice but to oppose her request because the defense was already too disadvantaged to allow her withdrawal. This actually served to highlight the lengths Learned Counsel Miller would go to either delay trial or have the case dismissed. And the judge appeared to be skeptical of her reasoning, as her credibility had already been called into question over the series of motions she brought concerning her embolism, particularly when it was revealed that she was concurrently involved in another case in the Virgin Islands.

It was also unusual that Defense Counsel Carmen told the court that she had assumed her petition could not be withdrawn and had already initiated actions for a move and a new job. This could reflect the fact that military commission judges do not have unilateral powers to impose punishment for contempt. However, the judge will be making a ruling but chose not to do so immediately, indicating that the situation would not be ripe for a final ruling until May.

Most striking, though, during this week's pretrial testimony was the government's rebuttal to defense's counterargument in the motion (AE 627) to suppress Bahlul's witness statements. The defense, taking advantage of what appeared to be a contradiction in the government's argument to not suppress Bahlul's witness statements, countered that if Bahlul was not telling the truth in court, the recorded statements would be equally unreliable. The government's strained rebuttal, in part, was that "liars do not always lie."

And while arguing for permission to use Bahlul's interview statements in light of his potential "unavailability" during the actual trial (Bahlul previously would not answer questions in the courtroom), the government stated that Bahlul's refusal to take an oath was a dodge of anything binding him to tell the truth. The judge afterward asked several questions and made several comments that made it appear he did not understand that, from the standpoint of Bahlul's own religion, not putting him under oath freed and even obliged him to give false testimony, even though he professed respect for judges on the basis of Islam.

What appears to be strained logic on the part of the government, was, in my opinion, something much worse: the government's failure to educate the judge on the practice of "taqiyah," which is generally defined as permission or encouragement for a Muslim to lie to non-believers in any matters to avoid persecution or avoid that which would hinder the spread of Islam. It is for this very reason that Ali Soufan and other interrogators actively sought outside corroboration for anything the detainees told them. For some reason, the government elected not to educate the judge on this practice. Hopefully, the subject was covered in a closed session.