

Military Commissions:
ISN 10024 Khalid Sheikh Mohammad et. al.
Pretrial Hearing Weeks
May 4-15, 2026

Events:

May 4 Commission Hearing

Though scheduled to begin at 9:00 a.m., the hearings on May 4 did not begin until 1:35 p.m. due to technical difficulties originating at GTMO.

According to the judge, the two weeks of hearing sessions were intended to be devoted entirely to determining the admissibility of the FBI Letterhead Memoranda (LHMs) for ISN 10024 Khalid Sheikh Mohammad (KSM), ISN 10014 Walid Muhammad Salih Mubarek bin Attash (bin Attash), and ISN 10011 Mustafa Ahmed Adam Al Hawsawi (Al Hawsawi). The government and the defense expected to argue for three days each, one day for each accused, for a total of six days in open session, followed by two or three days of closed or ex parte arguments over the LHMs.

Prior to argument on the LHMs, the defense team for Hawsawi placed an objection on the record against in-court decisions made during earlier sessions. During those sessions, the lead defense counsel had been hospitalized at GTMO, leaving Hawsawi insufficiently represented at the time.

Further, the defense team for ISN 10018 Ali Abdul Aziz Ali/Ammar al Baluchi (al Baluchi) objected to non-governmental organizations (NGOs) being excluded from on-island observation for the first of the two weeks.

And, finally, all teams motioned (AE 989) to set a date for commencement of trial. Though the judge did not rule on a trial date, he expressed openness to establishing a date from expected pre-trial events according to a plan to be agreed upon by the trial team and defense teams.

May 5 Commission Hearing

The trial team began argument for admissibility of the KSM Letterhead Memoranda on May 5 at 9:00 a.m. and concluded on May 6 at 12:30 p.m. Evidence for admissibility included:

- Transcripts of testimonies made by FBI and NCIS agents.
- Interviews with KSM where he acknowledged arranging an interview with a journalist who wrote the “Masterminds of Terror” book and recorded conversations between himself and other detainees in common areas regarding his perceptions of the interrogations by the CIA and interviews with the FBI and NCIS.

Key details showing that KSM participated in the LHM interviews voluntarily, included:

- Statements he made indicating he knew he could leave or stop the interviews at any time.
- A statement he made to a fellow detainee that showed he knew information gained by the CIA was inadmissible in court.
- Reports that KSM was comfortable making fat jokes about the interviewers and asking for photographs of his family.

May 6 Commission Hearing

The trial team began open argument for admissibility of the Hawsawi Letterhead Memoranda on May 6 at 2:05 p.m. and concluded on May 7 at approximately 2:40 p.m. Evidence for admissibility included:

- Transcripts of FBI and NCIS testimony.
- Recorded conversations between Hawsawi and other detainees in common areas that concerned Hawsawi's opinions on the FBI and the interviews.
- Recordings and transcripts from the Combatant Status Review Tribunal (CSRT) that discussed Hawsawi's attitude toward the USA.

Key details that the trial team relied upon to show Hawsawi voluntarily participated in the LHM interviews included:

- Hawsawi's dismissiveness about GTMO postings and personnel when in conversation with other detainees.
- Hawsawi's professional interview regarding his beliefs, Al Qaeda connections, and 9/11 involvement.
- The fact that when Hawsawi was previously at GTMO under CIA custody, he experienced no EITs, so he would have little to no fearful association with GTMO.
- Most of what he said in the LHM interviews he also said in the CSRT, as well as to fellow detainees.

The defense team for Hawsawi interrupted the trial team's arguments on May 7 from 9:06 to 10:23 a.m. to argue for a continuing seal on CSRT transcripts and recordings, but the judge ruled that the defense did not meet its burden for a continued seal.

May 7 Commission Hearing

The trial team began open argument for the admissibility of the Bin Attash Letterhead Memoranda on May 7 at approximately 3:35 p.m. and concluded on May 8 at approximately 4:00 p.m. Evidence for admissibility included:

- Numerous recordings of Bin Attash's conversations with other detainees.
- Testimony by interviewing FBI agents.
- Letters that the detainee sent through the International Committee of the Red Cross (ICRC).

Key details that the trial team relied upon included:

- Bin Attash participated in the interviews on nine different days, months apart, and amused himself by creating "cliff-hangers" at the end of many sessions.
- The fact that Bin Attash both hugged and politely threatened the main interviewer at the end of the first session.
- The fact that Bin Attash expressed frustration at being repeatedly told that the subjects covered and the duration of the interviews were "at your pleasure."
- That many of the things Bin Attash told the FBI in the LHM interviews he also wrote to his family in ICRC letters.

May 11 Commission Hearing

The defense team for KSM presented its argument for disqualification of the LHM on May 11 beginning at 9:00 a.m. and ending at 6:50 p.m. Key details that the defense relied upon to demonstrate involuntariness of the LHM statements included:

- Drawing parallels between repetitive questioning by CIA debriefers and repetitive statements by the FBI that anything said before did not matter, and the FBI needed to hear it.
- The similarity between rewarding cooperative behavior in the detainees by providing comfort items in GTMO cells to that of CIA debriefers rewarding detainee cooperation by refraining from Enhanced Interrogation Techniques (EITs).
- The fact that the FBI did not deliberately ask about ongoing coercion.

May 12 Commission Hearing

The defense team began argument for the disqualification of the Hawsawi Letterhead Memoranda on May 12 at approximately 9:20 a.m. and concluded on the same day at approximately 6:15 p.m. Key details that the defense relied upon included:

- Rulings by prior judges that Hawsawi's conditions of confinement were substantially similar between GTMO and several black sites.
- Dr. Mitchell's assertion that the Site 2 interrogations used harsher and aberrant techniques that counted as torture and not as EITs.
- Hawsawi's major depressive episodes would render his interviews to be involuntary whether he was impacted by torture or not.
- Unlike KSM, Hawsawi never asserted any limits or walked away from the LHM interviews. The defense noted this serves more as evidence of Hawsawi not believing he had that power than of him being willing to answer questions.

May 13 Commission Hearings

The defense team for Bin Attash began argument for the disqualification of the Bin Attash Letterhead Memoranda on May 13, 2026, at 10:20 a.m. and concluded the same day at 5:32 p.m. Key details that the defense team relied upon included:

- Studies of the attenuation of coercion and trauma are generally observed after only a very short time in trauma. The Renditions Detention and Interrogation (RDI) program lasted for years, so attenuation may not be possible and would likely not occur at the same rate.
- After an extended period of harsh treatment, rapport-building, like dining with Bin Attash on tea and dates, takes on a coercive quality.
- All of the ICRC letters post-date the LHMs, so what Bin Attash wrote in them was informed by the LHM interviews.
- That Bin Attash threatened interrogators while he was in the RDI program, so joking and threats to interviewers are not necessarily indications of voluntariness.
- The lead defense counsel for Bin Attash, who is specialized in false confessions, argued that the narrative and pride shown during the LHM interviews was a conditioned personality response adopted during the RDI program.

Observations:

Technical difficulties originating at GTMO plagued these pre-trial proceedings, beginning with a significant delay when the proceedings could not be transmitted on the first day, which included failure of interpreter channel relay, failure of a laptop being used to present evidence to function in the middle of argument, failure of microphones to pick up argument, and failure of the relay between the GTMO courtroom and the RHR. In combination with overly long days of argument and ill-disguised attempts to delay and extend argument to extra days, the problems visibly wore on the judge. Though the judge is ordinarily careful to prevent such circumstances from influencing his determinations, the rulings and decisions he made from the bench were unusually curt. The judge ruled on the following:

- The gallery and those observing the hearings remotely would be permitted to see videos that included simultaneous translations of Arabic spoken by detainees.
- Formerly sealed documents from the CSRT could be released and used in argument.
- Letters written for delivery through the ICRC were allowed for use in argument.
- Allowing audible, translated video display. (This was highly unusual, since a detainee's words are presumptively classified as Top Secret and video was not set up for declassification during the initial phases of the 9/11 commissions.)

The defense teams made a compelling argument against allowing ICRC letters to be used as evidence, citing the ICRC specification that the letters be held confidential or there would be a chilling effect on detainees throughout the world who might otherwise use the service. However, the bin Attash defense team ultimately consented to the use of ICRC letters as evidence, provided that the destination and recipient information would not be visible to the public during argument. This concession by the defense may have been to influence public opinion and, indirectly, panel member sympathy, because ICRC letters have appeared in district courts and military commissions pre-trials, both with and without the ICRC's authorization.

The judge also heard arguments on a motion (AE 989) to set a trial date. Though no ruling was made from the bench, the judge was able to bring about a general consensus between all teams that a trial date should be set based upon a set of goal points and events, rather than a strict calendar date at this time. The suggested goals to be reached were the ruling resolution of the admissibility of the LHM statements and the final rulings by the Supreme and Appellate courts on the plea agreements that were negotiated and then disqualified by the then-Secretary of Defense.

Though this agreement results in a rolling status for the beginning of the 9/11 trial, it appeared to suit both the government trial team and the defense teams in that it would accommodate continuing discovery and pre-trial arguments, as well as an extension of time to contact witnesses in the Middle East. The suggested time between the resolution of the LHM statements or the plea agreements and the beginning of a trial was suggested to be between 14 and 20 months, and hypothetical timelines displayed a trial beginning in November 2027.