United States Military Commissions:

R.M.C. 803 Pretrial Session in the matter of *United States v. Encep Nurjaman*

November 16–20, 2026

November 16 Pretrial Session:

On November 16, 2026, Military Judge Lt Col Braun presided over an R.M.C. 803 pretrial session in the matter of *United States v. Encep Nurjaman*, which ran from 0903 to 1352 hours. At the outset of the hearing, the court confirmed the presence of Mr. Nurjaman, Trial Counsel led by Lt Col Christopher Goewert, and Defense Counsel led by civilian attorney Mr. Todd Fanniff. Lt Col Braun advised Mr. Nurjaman of his rights to detailed, requested, and civilian counsel—which Mr. Nurjaman confirmed he understood—and swore in Detailed Defense Counsel Maj Stephen Millwood upon his initial appearance. Summarizing an informal R.M.C. 802 conference held the previous day at the PAX terminal, the judge noted that travel adjustments had cost the parties a day on the island and prevented a scheduled technology test, though both sides agreed to proceed. To accommodate dining facility hours and daily Muslim prayer times at approximately 1147 and 1458, the judge established daily recesses from 1130 to 1300 and 1445 to 1515. Before witness testimony could begin, the commission recessed twice (0914–0920 and 0926–0941) to fix audio-routing issues preventing the remote witness's feed from reaching the court reporter and Mr. Nurjaman's interpreters. Once the technical difficulties were resolved, the witness was re-sworn and direct examination restarted from the beginning.

Expert Witness Testimony: Dr. Lucy Guarnera

The morning session was devoted to the remote testimony of Dr. Lucy Guarnera, an Assistant Professor of Psychiatry and Neurobehavioral Sciences at the University of Virginia School of Medicine, who was called by the defense for the AE 0135, 0136, and 0138 motion series. Recognized without objection as an expert in psychology regarding police interrogations and disputed confessions, Dr. Guarnera provided general "teaching testimony" on scientific principles rather than evaluating case-specific discovery. Under direct examination by Detailed Defense Counsel Maj Hopkins, she explained the "case-to-lab pipeline," noting that researchers study over 500 proven real-world false confessions alongside controlled lab experiments to identify risk factors. She categorized false confessions as voluntary, coerced-compliant (where an innocent suspect confesses to escape an intolerable interrogation or secure perceived short-term leniency due to "interrogation-related regulatory decline"), and coerced-internalized (where reconstructive memory, stress, and external suggestions cause "source monitoring errors" that lead a suspect to temporarily believe they committed the crime). Dr. Guarnera detailed three sequential errors leading to false confessions—classification error (including cases of "partial innocence"), coercion error, and contamination error—and outlined the five personal risk factors and four situational risk factors (built on a guilt-presumptive interrogation) identified in the 2025 American Psychology-Law Society consensus paper. She also testified that healthy adults without personal risk factors can still falsely confess under sufficient situational pressure, that laypeople and police perform no better than chance at identifying false confessions due to a "truth bias," and that repeating a false confession makes it appear more fluent and persuasive. During cross-examination by Lt Col Goewert, Dr. Guarnera acknowledged that proven false confessions make up a very small fraction of total U.S. criminal cases, that researchers cannot assign numerical probability weights to individual risk factors, that trauma responses vary, and that risk factors render a confession unreliable rather than *per se* factually false. Following a brief redirect by Maj Hopkins clarifying misclassification in partial-innocence scenarios, Dr. Guarnera was permanently excused subject to potential recall, and the court recessed for lunch from 1114 to 1303.

Oral Argument on AE 0155.001 (NUR)

In the afternoon, the commission heard oral arguments on Defense Motion AE 0155.001 (NUR), in which the defense sought to compel unredacted originals of 47 classified discovery productions (totaling roughly 45,000 pages) or require the government to submit them through the Military Commission Rule of Evidence (M.C.R.E.) 505 process. Arguing for the defense, Maj Parsons contended that under the Military Commissions Act, M.C.R.E. 505, and analogous Classified Information Procedures Act (CIPA) precedent, only the military judge—not the prosecution—has the authority to approve redactions or modifications to classified discovery. She noted that the government admitted only one of the 48 productions had undergone M.C.R.E. 505 review, distinguished the *In re Al Nashiri* ruling, and raised concerns that prosecutors might not know what lies beneath pre-redactions made by Original Classification Authorities (OCAs). In response, Trial Counsel Mr. Short argued that M.C.R.E. 505(f) applies only when the government asserts a national security privilege over discoverable information, whereas R.M.C. 701 permits prosecutors to unilaterally redact irrelevant or immaterial material. Characterizing the motion as a "fishing expedition" lacking specific materiality until a subsequent filing (AE 0155.003), Mr. Short noted that at least one contested document had already been provided to the defense in an unredacted, unclassified format and maintained that no legal authority requires a privilege log for irrelevance redactions. Lt Col Braun questioned both sides on whether all redactions to classified documents require M.C.R.E. 505 review, affirmed that prosecutors bear the ultimate legal duty to know what is beneath OCA redactions, and urged the parties to confer offline regarding duplicate productions. After Trial Counsel indicated they were awaiting an OCA declaration to file a M.C.R.E. 505(h) motion the following day, **the commission recessed at 1352 until November 18, 2026, Wednesday at 0900, when it will reconvene in a closed session to address M.C.R.E. 505(g) and 505(h) matters.**

November 17 Update

Appellate Exhibit 0011.019 (GOV), is a public placeholder notice filed on November 17, 2026, by Trial Counsel Lt Col Christopher J. Goewert, USAF, in the Military Commissions Trial Judiciary at Guantanamo Bay, Cuba, in the matter of *United States v. Encep Nurjaman*. Submitted in accordance with Rule of Court 3.7.4.3.3, the notice informs the court and the public that the Government submitted an under-seal filing titled *Government Motion for Protective Order to Protect Grand Jury Testimony* to the Chief Clerk of the Military Commissions Trial Judiciary on that same date. The public filing consists of the initial notice, a one-page Certificate of Service confirming that copies were filed with the Trial Judiciary and served on counsel of record, and a placeholder cover sheet indicating that the substantive motion itself (spanning pages 4 through 25) remains sealed within the original record of trial under the custody of the Chief of the Office of Court Administration.

November 18 Update

Appellate Exhibit 0112.054 (TJ) – Case Management Order #4 Issued on November 18, 2026, by Military Judge Lt Col Wesley A. Braun, USAF, in *United States v. Encep Nurjaman*, Case Management Order #4 grants in part and denies in part a November 16 defense motion (AE 0112.053 (NUR)) seeking an enlargement of time until May 21, 2027, for two sets of pretrial deadlines originally established in Case Management Order #3. While the Commission agreed that an extension was reasonable and supported by good cause without unduly delaying proceedings, it found the specific length of time requested by the defense to be unreasonable. Consequently, the judge established a revised schedule: defense notices (including M.C.R.E. 513(e), 803(b)(1), affirmative defenses, and mental condition expert testimony) and R.M.C. 701(g) reciprocal discovery are due by March 1, 2027, with corresponding government motions due by April 1, 2027. Defense exhibit and witness lists, alongside R.M.C. 703(f)(4) production requests, are due by April 15, 2027, with government responses due by May 13, 2027, and any defense motions to compel due by May 20, 2027. Finally, defense notices regarding classified or privileged government information under M.C.R.E. 505(g) and 506(h) are due by June 3, 2027, giving the government 30 calendar days to object or request a hearing. Any future requests to extend these deadlines

must be submitted at least seven calendar days in advance, while all other unmodified deadlines remain unchanged.

Appellate Exhibit 0148.003 (TJ) – Amended Scheduling Order Calendar Year 2027 Also issued on November 18, 2026, by Military Judge Lt Col Wesley A. Braun, USAF, Appellate Exhibit 0148.003 (TJ) amends the Commission's Calendar Year 2027 hearing schedule for proceedings at U.S. Naval Station, Guantanamo Bay, Cuba. The order grants an unopposed defense motion filed on September 2, 2026 (AE 0148.002 (NUR)) requesting the cancellation of the hearing session scheduled for March 20–26, 2027, because it coincides with local school spring break holidays and would create significant childcare issues for multiple members of Mr. Nurjaman's defense team. Finding the unopposed request reasonable, supported by good cause, and unlikely to unduly delay or hinder the proceedings, the Commission formally cancelled the March 20–26, 2027 hearing session.

Observations

The November 16 proceedings demonstrated both operational resilience and the system's vulnerability to protracted discovery litigation. Lt Col Braun maintained firm control of the docket despite lost travel time, swiftly resolving morning technical bottlenecks to preserve the appellate record while striking a measured balance between courtroom momentum and religious accommodations for daily prayer windows. During the morning session, Trial Counsel's cross-examination exposed the limitations of Dr. Guarnera's abstract "teaching testimony," highlighting her lack of case-specific nexus—having reviewed zero discovery or statements from Mr. Nurjaman—and underscoring that theoretical psychological risk factors derived largely from domestic lab simulations represent a tiny fraction of criminal cases and do not prove unreliability in any individual instance. Similarly, the afternoon arguments on AE 0155.001 illustrated how sweeping defense discovery demands threaten to bog down national security prosecutions by forcing an "unfettered flood of documents" onto the court. By anchoring its opposition in R.M.C. 701 and *United States v. Yunis*, the prosecution effectively defended Executive Branch classification prerogatives and prosecutorial discretion against a blanket fishing expedition—particularly where the defense had failed to cross-reference unredacted material already in its possession. Ultimately, the session reinforced the necessity of strict judicial gatekeeping to safeguard sensitive intelligence equities and prevent procedural litigiousness from indefinitely delaying justice as the commission transitions into closed M.C.R.E. 505 sessions.