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1 [The R.M.C. 803 session was called to order at 0910, 14
2 September 2016.]

3 MJ [COL OSBORN]: This military commission is called to
4 order.

5 Trial Counsel, if you would, please account for the
6 parties who are present at this session.

7 TC [MR. SCHNEIDER]: Yes, Your Honor. Yes. [Moved to
8 podium.] Yes, Your Honor. I'm William Schneider and I'm the
9 trial counsel. With me at the government table is Major David
10 Abdalla, my assistant trial counsel. Behind us is Ms. Ronda
11 Toney, a paralegal, and Tech Sergeant Richard Moss, also a
12 paralegal.

13 MJ [COL OSBORN]: Mr. Schneider, were you present and was
14 Major Abdalla present at the previous session of this
15 commission in February of 2012?

16 TC [MR. SCHNEIDER]: Neither of us was, Your Honor.

17 MJ [COL OSBORN]: So if you would please announce your
18 legal qualifications, status as to oaths, and detailing
19 qualifications on the record.

20 TC [MR. SCHNEIDER]: Yes, Your Honor. Your Honor, all
21 trial counsel have been detailed to this military commission
22 by the chief prosecutor. All members of the prosecution are
23 qualified under RMC 502 and have previously been sworn in

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 accordance with RMC 807. No member of the prosecution has
2 acted in any manner that might tend to disqualify us in this
3 proceeding. The detailing document has been marked as AE
4 003A.

5 MJ [COL OSBORN]: Okay. Thank you, Mr. Schneider. I
6 believe you said you're the trial counsel and Major Abdalla is
7 the assistant trial counsel, correct?

8 TC [MR. SCHNEIDER]: That's correct, Your Honor.

9 MJ [COL OSBORN]: I'd also note that the members are
10 absent.

11 Defense Counsel, if you would, please, Colonel
12 Jackson, if you would please, notify or give me who was
13 present for the defense. You may approach the podium.

14 DDC [LTC JACKSON]: Yes, Your Honor. My name is
15 Lieutenant Colonel Jon Jackson. I'm lead detailed counsel on
16 the case. We also have Katya Jestin from Jenner & Block.
17 She's previously sworn. She was here at the last session,
18 along with Wells Dixon from the Center for Constitutional
19 Rights. He's previously sworn; was at the last session.
20 Lieutenant Suplizio, Tia Suplizio, from the United States
21 Navy. She is assistant detailed counsel. She has been sworn
22 but she will now announce her detailing qualifications.

23 MJ [COL OSBORN]: Lieutenant.

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 [Counsel away from podium; no audio.]

2 DDC [LtCol JACKSON]: You have to hold the button down.

3 ADC [LT SUPLIZIO]: My name is Lieutenant Tia Suplizio,
4 United States Navy, Judge Advocate General's Corp. I'm
5 certified under Rule for Military Commissions 502; sworn under
6 Rule for Military Commissions 807. I have not acted in any
7 manner which would disqualify me from representing Mr. Khan in
8 this proceeding.

9 MJ [COL OSBORN]: And I believe that your
10 detailing counseling -- or your document detailing you on the
11 record is, I believe, Appellate Exhibit 007A.

12 ADC [LT SUPLIZIO]: That is correct, ma'am.

13 MJ [COL OSBORN]: Colonel Jackson, please proceed.

14 DDC [LTC JACKSON]: Thank you, Your Honor. We also have
15 Natalie Orpett from Jenner & Block. She's pro bono counsel.
16 She needs to be sworn also and announce her qualifications.

17 MJ [COL OSBORN]: Please.

18 DDC [LTC JACKSON]: She needs to be sworn by you, Your
19 Honor, is my understanding.

20 MJ [COL OSBORN]: Well, she can announce qualifications
21 first.

22 DDC [LTC JACKSON]: Okay.

23 MJ [COL OSBORN]: And then I'll swear her.

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 DC [MS. ORPETT]: My name is Natalie Kay Orpett, attorney
2 at Jenner & Block. I'm certified for Rule of Military
3 Commissions 502 and will be sworn under Rule of Military
4 Commissions 807. I have not acted in any manner which would
5 disqualify me from representing Mr. Khan in this proceeding.

6 MJ [COL OSBORN]: Are you licensed to practice in a
7 federal court or the highest court of the state?

8 DC [MS. ORPETT]: I am.

9 MJ [COL OSBORN]: What state would that be?

10 DC [MS. ORPETT]: New York state.

11 MJ [COL OSBORN]: And I believe I have your appearance --
12 entry of appearance and agreement and that's Appellate
13 Exhibit 009A. I'll swear you in now. Please raise your right
14 hand.

15 [Counsel was sworn.]

16 DDC [LTC JACKSON]: We have two other members of the
17 defense team with us. They were not present at the last
18 hearing; that's Aliya Hussain, who's a pro bono paralegal; and
19 also our investigator, Special Agent Strong.

20 MJ [COL OSBORN]: All right. Thank you, Colonel Jackson.

21 DDC [LTC JACKSON]: Thank you.

22 MJ [COL OSBORN]: And you remain the lead, right?

23 DDC [LTC JACKSON]: Yes.

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL OSBORN]: So we have two new members here for the
2 defense team and then the three members of the defense team
3 were previously present in February of 2012. Did you also
4 mention, Colonel Jackson, that General Baker is present behind
5 you?

6 DDC [LTC JACKSON]: I did not, and that's a big exclusion.
7 The chief defense counsel, Brigadier General John Baker, is
8 also present.

9 MJ [COL OSBORN]: Okay. Thank you, Colonel Jackson.

10 The previous military judge asked these questions
11 back in February, but since we have new members, or new
12 counsel present, I want to ask all of you: Counsel for both
13 sides understand the provisions of the military provision --
14 military commissions concerning safeguarding classified
15 information. Is that correct, counsel?

16 TC [MR. SCHNEIDER]: That's correct, Your Honor.

17 MJ [COL OSBORN]: Defense?

18 DDC [LTC JACKSON]: Yes, Your Honor.

19 MJ [COL OSBORN]: And do counsel also understand that you
20 must, as soon as practicable, notify me of any intent to offer
21 evidence involving classified information so that I may
22 consider the need to close the proceedings? Government?

23 TC [MR. SCHNEIDER]: We do, Your Honor.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

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1 MJ [COL OSBORN]: Defense?

2 DDC [LTC JACKSON]: Yes, Your Honor.

3 MJ [COL OSBORN]: And as I'm required by the Manual for
4 Military Commissions to consider the safety of witnesses and
5 others at these proceedings, do counsel for both sides
6 understand that they must notify me of any issues regarding
7 the safety of potential witnesses so I may determine
8 appropriate ways in which testimony will be received and
9 witnesses protected? Government?

10 TC [MR. SCHNEIDER]: We do, Your Honor.

11 MJ [COL OSBORN]: Defense?

12 DDC [LTC JACKSON]: We also understand, Your Honor.

13 MJ [COL OSBORN]: Okay. Now before I continue any
14 further, Mr. Khan, good morning. It's my understanding that
15 you are fluent in English and you are comfortable with going
16 forward without an interpreter; is that correct?

17 ACC [MR. KHAN]: Yes, ma'am.

18 MJ [COL OSBORN]: Are you able to understand -- both
19 understand and speak English?

20 ACC [MR. KHAN]: Yeah, I'm pretty fluent.

21 MJ [COL OSBORN]: And do you believe that you need the
22 services of an interpreter for these proceedings?

23 ACC [MR. KHAN]: No, ma'am.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL OSBORN]: Do you believe that you need the
2 services of a translator for these proceedings?

3 ACC [MR. KHAN]: No, ma'am.

4 MJ [COL OSBORN]: Now, at the last session you said that
5 you wished to be represented by the three previous defense
6 counsel. Two new defense counsel have apparently joined your
7 team. Do you wish to be represented now by all five of these
8 defense counsel?

9 ACC [MR. KHAN]: The more the merrier, ma'am.

10 MJ [COL OSBORN]: Very well. And do you still wish to
11 have Colonel Jackson serve as the lead defense counsel?

12 ACC [MR. KHAN]: Yes, ma'am.

13 MJ [COL OSBORN]: My name is Colonel Tara Osborn and I
14 have been detailed to this military commission by Colonel
15 James Pohl, who is the chief judge of the military
16 commissions. I have been previously sworn in accordance with
17 Rule for Military Commission 807. I'm certified and qualified
18 in accordance with Article 27(b) and (c) and 42(a) of the
19 Uniform Code of Military Justice, as well as Rule for Military
20 Commission 503. I don't believe that there are any grounds
21 for challenge against me.

22 There are certain classified matters that we need to
23 discuss pursuant to M.C.R.E. 505(h). So what I'm going to do

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1 now is close the session and at the conclusion of the session
2 we'll reopen to conclude the business that we need to tend to
3 at this point.

4 Now, in an 802 session yesterday, the defense counsel
5 asked for a recess for additional time to meet with their
6 client, so we will break for a recess and reconvene in a
7 505(h) hearing at ----

8 DDC [LTC JACKSON]: Your Honor ----

9 MJ [COL OSBORN]: ---- 9:50.

10 DDC [LTC JACKSON]: Your Honor ----

11 MJ [COL OSBORN]: Yes.

12 DDC [LTC JACKSON]: ---- we were able to meet with him. I
13 think we were able to go through everything we needed to.

14 MJ [COL OSBORN]: All right. Very well. Thank you,
15 Colonel Jackson. I think we still need 45 -- or 30 minutes so
16 we'll reconvene at 9:45.

17 Guard Force, if you would, please, keep Mr. Khan in
18 the holding cell, and the commission is in recess.

19 [The R.M.C. 803 session recessed at 0919, 14 September 2016.]

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