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1 [The R.M.C. 803 session was called to order at 1414, 18 June
2 2014]

3 MJ [CAPT WAITS]: Carry on, please.

4 This military commission is called to order.

5 Trial Counsel.

6 TC [MR. CLAYTON]: This military commission is appointed
7 by Convening Order Number 14-01, dated 5 February 2014, copies
8 of which have been furnished to the military judge, counsel,
9 and the accused, and will be attached to the record. These
10 proceedings are being transmitted via closed-circuit
11 television to remote viewing sites at Fort Meade, Maryland,
12 pursuant to the military judge's interim order on public
13 access to open proceedings AE 005A.

14 The charges have been properly approved by the
15 convening authority and referred to this commission for trial.
16 The prosecution caused a copy of the charges in English and
17 Arabic, the accused's native language, to be served on the
18 accused on 9 June 2014. A copy of the translated charge sheet
19 is attached to the record as AE 009.

20 The prosecution is ready to proceed in the
21 arraignment of United States v. Abd al Hadi al-Iraqi, also
22 known as Hadi al-Iraqi, Nashwan Abd al-Razzaq Abd al-Baqi,
23 Abdullah Khan, Abu 'Abdallah, Abd al-Muhayman al-Iraqi, Abd

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1 al-Hadi al-Ansari, Abu Nadia, Ahmad Gazi, Khutaiba al Ansari,
2 Abdulrahman Yar Mohammed, Mohammaed Reza Ranjbar Rezai.

3 The accused and the following personnel detailed to
4 this commission are present: Captain J. Kirk Waits, Military
5 Judge. Mr. Mikeal Clayton, trial counsel. Lieutenant Colonel
6 David J. Long, assistant trial counsel. Lieutenant Colonel
7 Chris Callen, detailed defense counsel. Major Robert Stirk,
8 detailed defense counsel. The members are absent.

9 The court reporter has been detailed for this
10 commission and has been previously sworn. The court security
11 officer has also been detailed for this military commission
12 and has previously been sworn.

13 MJ [CAPT WAITS]: I have been detailed to this case by the
14 chief judge of the military commissions trial judiciary
15 pursuant to rule for commission 503. I am certified and
16 qualified in accordance with Articles 26(b) and (c) of the
17 Uniform Code of Military Justice, as well as Rule For Military
18 Commission 502 and 503, and I have previously been sworn under
19 Article 42(a) of the Uniform Code of Military Justice and Rule
20 for Military Commission 807.

21 All right. Before continuing with other preliminary
22 matters in this commission, it's necessary for the commission
23 to inquire into the accused's need for an interpreter and

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1 translator.

2 At an R.M.C. 802 conference yesterday the court
3 inquired about this issue and was told that the accused's
4 language that he would like to have the proceedings
5 interpreted or translated into is Arabic. Is that correct,
6 Colonel Callen?

7 DDC [LTC CALLEN]: That's correct, Your Honor.

8 MJ [CAPT WAITS]: Very well. So, based on that,
9 Mr. Callen, has the defense team had a translator assigned who
10 speaks Arabic?

11 DDC [LTC CALLEN]: We do, Your Honor.

12 MJ [CAPT WAITS]: Very well.

13 All right, now I'm addressing Mr. Hadi. Mr. Hadi,
14 are you satisfied that the translator who has been appointed
15 for you will be satisfactory to translate these proceedings
16 for you in Arabic?

17 ACC [MR. AL HADI]: Yes, I do.

18 MJ [CAPT WAITS]: Thank you. And I assume you're the
19 translator, sir?

20 TRANSLATOR: Yes.

21 MJ [CAPT WAITS]: Okay. I have signed a protective order
22 that protects the identities of translators and interpreters
23 in the case, but I'm going to ask you at this time if you are

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1 qualified to interpret and translate into Mr. Hadi's language,
2 and whether you have previously been sworn.

3 TRANSLATOR: Yes, I do, Your Honor.

4 MJ [CAPT WAITS]: Okay. All right, Trial Counsel.

5 TC [MR. CLAYTON]: Your Honor, we believe -- I believe
6 it's the court's position that the curriculum vitae of this
7 translator and each of the other translators associated be
8 sealed, and the commission's interpreters' curriculum vita
9 have been marked as AE 008.

10 MJ [CAPT WAITS]: That is correct.

11 Mr. Clayton, at this time would you please state by
12 whom you and your co-counsel have been detailed, your legal
13 qualifications and your status as to oath.

14 TC [MR. CLAYTON]: Yes, Your Honor.

15 All trial counsel have been detailed to this military
16 commission by the chief prosecutor in accordance with Rule for
17 Military Commissions 502(d), and we have previously been sworn
18 in accordance with R.M.C. 807. No member of the prosecution
19 has acted in any manner which might tend to disqualify us in
20 this proceeding. The detailing document has been marked as AE
21 003.

22 Also present for the prosecution is paralegal
23 Sergeant First Class James Fugman, and intelligence analyst

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1 Ms. Lindsey Spitler. Both are seated behind me at counsel
2 table. Also present for the prosecution are Special Agent Jim
3 Hodgson of the Department of Defense's criminal investigation
4 task force and Supervisory Special Agent Paul Shannon of the
5 Federal Bureau of Investigation, both of which are seated in
6 the back of the courtroom. None of these personnel will be
7 representing the government in this matter.

8 MJ [CAPT WAITS]: Very well. Now, you didn't mention
9 R.M.C. 503, I don't believe, just then.

10 TC [MR. CLAYTON]: I did not, Your Honor. Please let me
11 grab my book.

12 MJ [CAPT WAITS]: Oh, I'm sorry. Okay. It's in the --
13 it's in our trial guide today.

14 TC [MR. CLAYTON]: I apologize, Your Honor. I misread
15 502(d) as in the place I meant to read 503.

16 MJ [CAPT WAITS]: Okay.

17 TC [MR. CLAYTON]: And to say that all members of the
18 prosecution are qualified also under R.M.C. 502(d). My
19 apologies.

20 MJ [CAPT WAITS]: Very well. All right. Thank you.

21 All right. Mr. Hadi, pursuant to the Manual for
22 Military Commissions, the court has been notified or the
23 commission has been notified that you are represented by

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1 Lieutenant Colonel Chris Callen and Major Robert Stirk, who
2 are your detailed defense counsel. Do you understand this?

3 ACC [MR. AL HADI]: Yes, Your Honor, I understand that,
4 but I would like to say something here, that I am in need of
5 another civilian lawyer because of what's going on between
6 Afghanistan and Iraq, and because it's very destructive from
7 your government. So I would like to know that because my
8 understanding that my lawyer will be leaving in several weeks.

9 MJ [CAPT WAITS]: Okay. I didn't understand what the
10 interpreter said about another something lawyer. I thought I
11 heard the word "seven," but...

12 DDC [LTC CALLEN]: "Civilian," I believe, Your Honor.

13 MJ [CAPT WAITS]: Civilian, okay.

14 That was part of my -- of a later advisement I was
15 going to give you is that the commission had been made aware
16 that Lieutenant Colonel Callen will be leaving on the 30th of
17 September of 2014 because his reserve orders are -- end.

18 So the court -- or the commission was going to
19 ascertain from you whether you were aware of that and whether
20 you were willing to proceed with Lieutenant Colonel Callen
21 until such time, and whether you, at this time, will
22 acknowledge that he can be released from your case as of 1
23 October, I presume.

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1 ACC [MR. AL HADI]: (Speaking in arabic not interpreted.)

2 MJ [CAPT WAITS]: So at this time the court acknowledges
3 that other counsel is probably prudent in your case, whether
4 it be other detailed military counsel or civilian counsel of
5 your choosing; however, at this time, I would like to have an
6 acknowledgement from you that you are willing to -- or that it
7 is your desire to have Lieutenant Colonel Callen continue to
8 represent you until 30 September, and that you are willing at
9 this time to acknowledge that you will release him from your
10 case based on his military orders expiring.

11 ACC [MR. AL HADI]: (Speaking in arabic not interpreted.)

12 MJ [CAPT WAITS]: Colonel Callen, was that ----

13 ACC [MR. AL HADI]: (Speaking in arabic not interpreted.)

14 MJ [CAPT WAITS]: All right. So, Colonel Callen, I assume
15 that either the chief defense counsel's office will
16 aggressively attempt to identify other detailed military
17 counsel ----

18 DDC [LTC CALLEN]: Yes, Your Honor. The chief of the --
19 OCDC is familiar with the situation and she is already
20 diligently looking for other attorneys to take my place.

21 MJ [CAPT WAITS]: Okay. And your client also mentioned
22 the possibility of civilian counsel, which I will address that
23 right with him in just a moment.

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1 Mr. Hadi, do you understand that all detailed
2 counsel -- that is, any military counsel -- are provided to
3 you free of charge?

4 ACC [MR. AL HADI]: Yes, I do.

5 MJ [CAPT WAITS]: And in addition to any detailed military
6 counsel, you may also be represented by qualified civilian
7 attorneys?

8 ACC [MR. AL HADI]: Yes, I do.

9 MJ [CAPT WAITS]: And do you understand that any civilian
10 attorney who represents you would represent you at no expense
11 to the United States government?

12 ACC [MR. AL HADI]: Yes, I do.

13 MJ [CAPT WAITS]: And in order to be qualified to
14 represent you in this commission, a civilian lawyer must be a
15 United States citizen?

16 ACC [MR. AL HADI]: Yes.

17 MJ [CAPT WAITS]: And that civilian lawyer must be
18 admitted to practice law in a state, district, territory, or
19 possession of the United States or a federal court?

20 ACC [MR. AL HADI]: Yes.

21 MJ [CAPT WAITS]: And any civilian attorney may not have
22 been the subject of any disqualifying action by a bar or other
23 competent authority?

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1 ACC [MR. AL HADI]: Yes.

2 MJ [CAPT WAITS]: And that that civilian attorney must
3 also be eligible for a secret or higher clearance, as
4 required?

5 ACC [MR. AL HADI]: Yes.

6 MJ [CAPT WAITS]: And that any civilian attorney must
7 agree in writing to comply with the orders, rules and
8 regulations of these military commissions. Do you understand
9 this?

10 ACC [MR. AL HADI]: I do.

11 MJ [CAPT WAITS]: Finally, if a civilian lawyer does
12 represent you, your detailed defense counsel will continue to
13 represent you as well, unless you specifically waive the right
14 to be represented by detailed counsel. Do you understand
15 this?

16 ACC [MR. AL HADI]: Yes, I do.

17 MJ [CAPT WAITS]: Mr. Hadi, do you have any questions
18 about any of your rights to counsel before this commission, as
19 I have explained them?

20 DDC [LTC CALLEN]: We lost the translation, Your Honor.

21 MJ [CAPT WAITS]: Oh, I'm sorry.

22 ACC [MR. AL HADI]: For the time being, no.

23 MJ [CAPT WAITS]: Okay. So I will ask you at this time,

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1 Mr. Hadi, do you desire to be represented by Lieutenant
2 Colonel Callen up until the 30th of September, and by Major
3 Robert Stirk?

4 ACC [MR. AL HADI]: Yes, I do.

5 MJ [CAPT WAITS]: At this time, do you want to be
6 represented by any other qualified counsel, either military or
7 civilian?

8 ACC [MR. AL HADI]: Not for the time being. Maybe later.

9 MJ [CAPT WAITS]: Very well. Thank you.

10 All right. At this time, then, military counsel will
11 announce their detailing and their qualifications and their
12 status as to oath.

13 DDC [LTC CALLEN]: Your Honor, all members of the defense
14 have been detailed to this military commission by the chief
15 defense counsel in accordance with R.M.C. 503. We are
16 qualified under R.M.C. 502, and we have been previously -- we
17 have previously been sworn in accordance with R.C.M. 807. We
18 have not acted in any manner that might tend to disqualify us
19 in this proceeding, and the document detailing counsel is
20 marked as AE 007.

21 MJ [CAPT WAITS]: Thank you, Colonel Callen.

22 DDC [LTC CALLEN]: Your Honor, I'd just like to identify
23 that we have another individual at the table with us.

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1 MJ [CAPT WAITS]: You may.

2 DDC [LTC CALLEN]: That's Chief Jennifer Bailey.

3 MJ [CAPT WAITS]: Very well. Thank you.

4 I am not aware of any grounds for challenge against
5 me. I do not expect to be called as a witness in this case;
6 however, at this time I invite -- well, and I have also
7 provided a copy of my biography. It has been marked as
8 Appellate Exhibit 010. At this time, I invite voir dire and
9 challenge by counsel from both sides.

10 Trial Counsel.

11 TC [MR. CLAYTON]: Your Honor, we have no questions, but
12 we'd like to reserve the right, subject to any questions that
13 might arise following the defense counsel's voir dire of the
14 court.

15 MJ [CAPT WAITS]: Very well.

16 Defense, any voir dire?

17 DDC [LTC CALLEN]: Just a few questions, Your Honor.

18 MJ [CAPT WAITS]: Very well.

19 DDC [LTC CALLEN]: Your Honor, in this case the convening
20 authority is Paul L. Oostburg Sanz, and of course, he's the
21 general counsel for the Navy. In respect to Mr. Oostburg
22 Sanz, have you had any communications with him in regard to
23 this case?

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1 MJ [CAPT WAITS]: I never have.

2 DDC [LTC CALLEN]: And have you had any personal or
3 professional interaction with Mr. Oostburg Sanz during your
4 career that may impact your ability to be impartial in this
5 case?

6 MJ [CAPT WAITS]: I've never met him and I've never had
7 any communications with him.

8 DDC [LTC CALLEN]: Okay. And would the fact that the
9 convening authority is the general counsel for the Navy and
10 you are a naval judge advocate, would that in any way impact
11 your ability to be impartial in the case?

12 MJ [CAPT WAITS]: Not at all.

13 DDC [LTC CALLEN]: Okay. I'm going to move away from
14 Mr. Sanz. Just in regard to the attacks on 9/11, were any
15 members of your -- do you have any family members or close
16 friends who were killed in the 9/11 attacks?

17 MJ [CAPT WAITS]: I do not. I only know of one person who
18 was killed in the 9/11 attacks, and that was a brief,
19 professional association.

20 DDC [LTC CALLEN]: Okay. And anyone seriously injured?
21 Do you know of anyone in the 9/11 attacks?

22 MJ [CAPT WAITS]: No. That person I just mentioned was
23 killed in the 9/11, but ----

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1 DDC [LTC CALLEN]: Oh.

2 MJ [CAPT WAITS]: No others.

3 DDC [LTC CALLEN]: Okay. Yes, Your Honor.

4 And these next set of questions just pertain to the
5 Gulf War in 1991 and the Iraq War of 2003-2011. It's
6 essentially the same series of questions. Did you have any
7 family members or close friends who were killed in those wars?

8 MJ [CAPT WAITS]: No.

9 DDC [LTC CALLEN]: Okay. Or seriously injured?

10 MJ [CAPT WAITS]: No.

11 DDC [LTC CALLEN]: Okay. And I'd just ask the same
12 questions for the war in Afghanistan. Any family members or
13 close friends killed in that war?

14 MJ [CAPT WAITS]: No.

15 DDC [LTC CALLEN]: Okay. Or seriously injured?

16 MJ [CAPT WAITS]: No.

17 DDC [LTC CALLEN]: Okay. May I have a moment, Your Honor?

18 MJ [CAPT WAITS]: You may.

19 DDC [LTC CALLEN]: Okay. Thank you, Your Honor.

20 MJ [CAPT WAITS]: Does the government have any questions
21 in light of the questions from the defense?

22 TC [MR. CLAYTON]: No, Your Honor.

23 MJ [CAPT WAITS]: Does either side have a challenge for

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1 the commissions judge?

2 TC [MR. CLAYTON]: Nothing from the government, Your
3 Honor.

4 DDC [LTC CALLEN]: Nothing from the defense, sir.

5 MJ [CAPT WAITS]: Very well. All right. Do counsel for
6 both sides understand the provisions of the Manual for
7 Military Commissions concerning safeguarding and securing
8 classified information in this case?

9 TC [MR. CLAYTON]: Yes, Your Honor.

10 DDC [LTC CALLEN]: Yes, Your Honor.

11 MJ [CAPT WAITS]: And do you understand that you must, as
12 soon as practicable, notify the commission of any intent to
13 offer evidence involving classified information so that I may
14 consider the need to close any proceedings?

15 TC [MR. CLAYTON]: Yes, Your Honor.

16 DDC [LTC CALLEN]: Yes, Your Honor.

17 MJ [CAPT WAITS]: I am required by the Manual for Military
18 Commissions to consider the safety of witnesses and others at
19 these proceedings. Do counsel for both sides understand that
20 they must notify the commission of any issues regarding the
21 safety of potential witnesses so that I may determine the
22 appropriate ways in which testimony will be received and
23 witnesses protected?

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1 TC [MR. CLAYTON]: Yes, Your Honor.

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

3 MJ [CAPT WAITS]: Is my mic picking up, up here, with
4 everyone? All right.

5 The only protective orders of which I am aware have
6 been marked as Appellate Exhibit 004D, courtroom security;
7 Appellate Exhibit 005A, public access to open proceedings of
8 this commission via closed-circuit television; and 006A,
9 nondisclosure of commission panel members' identities. Have
10 both sides seen these Appellate Exhibits?

11 TC [MR. CLAYTON]: Yes, Your Honor.

12 DDC [LTC CALLEN]: Yes, Your Honor.

13 MJ [CAPT WAITS]: Is either side aware of any additional
14 protective orders that I have not listed? And if so, I would
15 ask that you please produce those at this time.

16 TC [MR. CLAYTON]: None from the government, Your Honor.

17 DDC [LTC CALLEN]: None from the defense, sir.

18 MJ [CAPT WAITS]: All right. For the record, yesterday up
19 in AV 34 I had a R.M.C. 802 conference with counsel from both
20 sides. Everyone was present. All counsel were present. The
21 purpose of that initial 802 conference was to discuss the
22 logistical and administrative matters related to this
23 arraignment as well as to discuss counsel's anticipated way

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1 ahead in this case.

2 We discussed generally the level of, or the volume of
3 classified evidence that might come into play in this case.
4 As the commission has already mentioned, I ascertained that
5 Mr. Hadi's language that he would like to have the proceedings
6 translated to was Arabic. And other than that, the remainder
7 of our discussions were really about the prospect of a
8 litigation schedule in this case. And then I had another
9 brief 802 conference prior to coming on the record here in
10 courtroom 2, in my chambers related to whether -- to the
11 propriety of giving R.M.C. 804 warnings in this case, which
12 the court elected not to, not to do, the commission elected
13 not to do.

14 Do counsel from either side want to add anything to
15 the court -- to the commission's summary of those conferences?

16 TC [MR. CLAYTON]: Nothing from the government,
17 Your Honor.

18 DDC [LTC CALLEN]: Nothing to add, Your Honor.

19 MJ [CAPT WAITS]: Thank you.

20 The accused will now be arraigned. All personnel
21 appear to have the requisite qualifications, and everyone who
22 is required to be sworn has been sworn.

23 Lieutenant Colonel Callen, has -- have you and

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1 Mr. Hadi been previously provided with a copy of the charges
2 in this case?

3 DDC [LTC CALLEN]: We have, Your Honor.

4 MJ [CAPT WAITS]: All right. To the court's knowledge --
5 all right. The amended Arabic charge sheet has been marked as
6 Appellate Exhibit 009A today, and trial counsel previously may
7 have referred to that, but I don't know if you referred to the
8 letter A as far as the sequence of that in the record.
9 Appellate Exhibit 009 was submitted as the original Arabic
10 translation, and 009A is the amended.

11 The trial counsel will at this time announce the
12 general nature of the charges in this case.

13 Mr. Clayton.

14 TC [MR. CLAYTON]: Thank you, Your Honor. The general
15 natures of the charges in this case are as follows: Denying
16 quarter, attacking protected property, using treachery or
17 perfidy, attempted use of treachery or perfidy, and
18 conspiracy.

19 MJ [CAPT WAITS]: Does the defense desire that the charges
20 be read?

21 DDC [LTC CALLEN]: We waive reading of the charges,
22 Your Honor.

23 MJ [CAPT WAITS]: Very well. The reading may be omitted.

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1 Accused and counsel, please rise. Mr. Hadi, at this
2 time I ask you how do you plead? But I advise you that any
3 motion addressed under Rule For Military Commission 905(b)
4 must be made prior to the entry of pleas. At this time your
5 counsel will speak for you.

6 DDC [LTC CALLEN]: The defense reserves pleas and motions
7 until later dates, Your Honor.

8 MJ [CAPT WAITS]: Very well. I will allow that and we
9 will -- the court will be promulgating an order directing the
10 time of pleas and motions in this case. Everyone may be
11 seated.

12 All right. Do counsel for either side have any
13 issues that they need to put on the record at this time?

14 TC [MR. CLAYTON]: Your Honor, we have nothing further.

15 MJ [CAPT WAITS]: Anything further from the defense?

16 DDC [LTC CALLEN]: Nothing further from the defense,
17 Your Honor.

18 MJ [CAPT WAITS]: Very well, then. Counsel, I would just
19 ask that you please comply with the court's order -- oral
20 order yesterday from the R.M.C. 802 conference to propose a
21 schedule for the milestones that I directed by 27 June. So at
22 this time the court does not know what the -- or has not
23 directed a further session of this commission; however, that

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1 will be promulgated in a written order of the commission.

2 There being no other issues from either side, this
3 court-martial [**sic**] is in recess until further ordered by the
4 commission. Please carry on.

5 [The R.M.C. 803 session recessed at 1447, 18 June 2014.]

6 [END OF PAGE]

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