

~~CU~~

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA v. KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN 'ATTASH, ALI ABDUL AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI	AE 630BBBBBB (U) RULING Mr. Mohammad's Motion to Suppress Letterhead Memorandum Statements Because the Government Cannot Demonstrate by a Preponderance of the Evidence that They Were Voluntarily Given 28 August 2026
--	--

1. ~~(U)~~ **Issue Presented.** Whether the Prosecution has proven by a preponderance of the evidence that statements made by Mr. Mohammad to Federal Bureau of Investigation (FBI) and High Value Detainee Prosecution Task Force (HVD PTF) agents between 12 and 16 January 2007 at Naval Station Guantanamo Bay (NSGB), Cuba, as documented in FBI Letterhead Memoranda (LHM), were voluntarily given, or whether the statements remained tainted by the physical and psychological coercion he previously suffered in the Central Intelligence Agency (CIA)'s Rendition, Detention, and Interrogation (RDI) program.

2. ~~(U)~~ **Procedural History.**

a. ~~(U)~~ Between 28 December 2016 and 3 August 2021, the Prosecution filed a series of notices, pursuant to Military Commission Rule of Evidence (M.C.R.E.) 304, declaring its intent to offer into evidence certain statements made by the Accused.¹

¹ ~~(U)~~ See AE 477 (GOV), Government Notice Of Intent To Offer Certain Statements of the Accused Pursuant to M.C.R.E. 304(c)(2)(B), filed 28 December 2016; AE 477 (GOV Amend), Amendment to Government Notice Of Intent To Offer Certain Statements of the Accused Pursuant to M.C.R.E. 304(c)(2)(B), filed 6 January 2017; AE 477 (GOV Sup), Government Supplemental Notice Of Intent to Offer Certain Statements of the Accused Pursuant to MCRE 304(c)(2)(B), filed 1 October 2019; AE 477 (GOV 2nd Sup), Government Supplemental and Consolidated Notice Of Intent to Offer Certain Statements of the Accused Pursuant to MCRE 304(c)(2)(B), filed 3 August 2021.

~~CU~~

~~CUI~~

b. ~~(U)~~ On 17 August 2018, the Commission *sua sponte* suppressed the Accused's FBI LHM statements, concluding that the Prosecution's proposed Protective Order #4 impermissibly limited the Defense's ability to investigate their case and litigate suppression.²

c. ~~(U)~~ On 3 April 2019, the Commission reconsidered this ruling and suspended the suppression, finding its earlier remedy premature. The Commission directed that evidentiary hearings be held to address the voluntariness of the FBI LHM statements and established a timeline for the Defense to file substantive motions to suppress.³

d. ~~(U)~~ On 10 May 2019, Mr. Mohammad filed the instant motion to suppress his FBI LHM statements, arguing they were not voluntarily given.⁴ He expressly reserved other grounds for suppression, including that the FBI LHM statements were obtained by torture or cruel, inhuman and degrading treatment in violation of M.C.R.E. 304(a)(1), or that they were derived from statements thereby obtained in violation of M.C.R.E. 304(1)(5).⁵

e. ~~(U)~~ On 24 May 2019, the Prosecution responded.⁶

f. ~~(U)~~ On 4 June 2019, Mr. Mohammad replied, reiterating that his motion is premised on voluntariness grounds alone, and again reserving all other bases for suppression.⁷

² ~~(U)~~ See AE 524LL Ruling, Mr. al Baluchi's Motion to Dismiss, or in the Alternative, to Compel the Government to Produce Witnesses for Interview – Government Notice of Proposed Protective Order, dated 17 August 2018.

³ ~~(U)~~ See AE 524LLL Ruling, Government Motion to Reconsider and Clarify AE 524LL, Ruling, dated 3 April 2019.

⁴ ~~(U)~~ See AE 630 (KSM), Mr. Mohammad's Motion to Suppress Letterhead Memorandum Statements Because the Government Cannot Demonstrate by a Preponderance of the Evidence that They Were Voluntarily Given, filed 10 May 2019 at 4.

⁵ ~~(U)~~ See *id.* at 2, n. 5.

⁶ ~~(U)~~ See AE 630C (GOV), Government Response To Mr. Mohammad's Motion to Suppress Letterhead Memorandum Statements Because the Government Cannot Demonstrate by a Preponderance of the Evidence that They Were Voluntarily Given, filed 24 May 2019.

⁷ ~~(U)~~ See AE 630E (KSM), Mr. Mohammad's Reply to AE 630C (GOV), filed 4 June 2019 at 5.

~~CUI~~

~~CUI~~

g. ~~(U)~~ On 10 October 2023, the Commission issued a Trial Conduct Order (TCO) directing the Parties to update their filings regarding the suppression of the FBI LHM statements in light of the passage of time and the current posture of the litigation.⁸

h. ~~(U)~~ On 15 November 2023, the Commission modified the existing deadlines and ordered each Accused to file a supplement to their motion to suppress the FBI LHM statements, mandating that the motion address both voluntariness and the investigative restriction issues raised in AE 524LL and AE 524LLL.⁹

i. ~~(U)~~ On 8 February 2024, Mr. Mohammad filed a supplement to his motion to suppress and expanded his voluntariness challenge to also include alleged due process and rights advisement violations.¹⁰

j. ~~(U)~~ On 3 December 2025, the Commission issued a TCO implementing a two-phased procedure for litigating the suppression of the Accused's FBI LHM statements.¹¹

k. ~~(U)~~ On 27 January 2026, the Commission issued a ruling affirming the two-phased litigation framework and denying defense motions to suspend deadlines or cancel the suppression hearings.¹²

⁸ ~~(U)~~ See AE 524AAAA / AE 628FFFFFF / AE 630QQQQ / AE 631Z / AE 632YY / AE 791A Corrected Copy, Trial Conduct Order, Defense Motions to Suppress Letterhead Memoranda Statements, dated 10 October 2023.

⁹ ~~(U)~~ See AE 524-47 (RUL)(GOV) / AE 628-16 (RUL)(GOV) / AE 630-14 (RUL)(GOV) / AE 631-2 (RUL)(GOV) / AE 632-10 (RUL)(GOV) / AE 791-2 (RUL)(GOV) Ruling, Government Motion For Extension of Time To Comply With Trial Conduct Order, Defense Motions to Suppress Letterhead Memoranda Statements, Paragraphs 3.a.-b., dated 15 November 2023.

¹⁰ ~~(U)~~ See AE 630 (KSM Sup), Mr. Mohammad's Supplement To AE 630 (KSM), Mr. Mohammad's Motion to Suppress Letterhead Memorandum Statements Because the Government Cannot Demonstrate by a Preponderance of the Evidence that They Were Voluntarily Given, filed 8 February 2024 at 5.

¹¹ ~~(U)~~ See AE 630LLLLL / AE 631BBBB / AE 632CCCC, Trial Conduct Order, Motions by Messrs. Mohammad, bin 'Attash, and Hawsawi to Suppress Federal Bureau of Investigation (FBI) Letterhead Memoranda (LHM) Statements, dated 3 December 2025.

¹² ~~(U)~~ See AE 630UUUUU / AE 631HHHH / AE 632LLLL Ruling, Mr. Mohammad and Mr. al Hawsawi's Motion to Cancel the January Hearings, Suspend Filing Deadlines Related to Their Motions to Suppress the Letterhead

~~CUI~~

~~CUI~~

1. ~~(U)~~ On 5, 6, and 11 May 2026, the Commission heard unclassified oral arguments in open session.¹³ On 14 May 2026, the Commission heard classified oral arguments in closed session.¹⁴

m. ~~(U)~~ On 26 May 2026, the Prosecution filed a consolidated rebuttal to the Defense oral arguments regarding the statements to law enforcement.¹⁵

3. ~~(U)~~ Facts.

a. ~~(U)~~ The CIA RDI program.

(1) ~~(U)~~ The findings of facts within this subparagraph are adopted from this Commission's ruling in AE 942SSSS.¹⁶ The Prosecution has waived challenge to these facts, and, further, has conceded that these facts are without clear error.¹⁷

A. ~~(U)~~ On 17 September 2001, in the wake of the 11 September 2001 terrorist attacks on the United States, President George W. Bush signed a covert action Memorandum of

Memorandum (LHM) Statements, and Excuse Them from Participation in Contested Litigation And AE 631CCCC (WBA), Mr. Bin 'Attash's Motion to Suspend All Deadlines in AE 631BBBB (TCO), dated 27 January 2026.

¹³ ~~(U)~~ See Unofficial/Unauthenticated Transcript of *U.S. v. Khalid Shaikh Mohammad, et al.* (Tr.), dated 5 May 2026 at 53394-53488, 6 May 2026 at 53506-53676, and 11 May 2026 at 53970-54030.

¹⁴ ~~(U)~~ See Tr. dated 14 May 2026 at 54544-55461.

¹⁵ ~~(U)~~ See AE 630YYYYY (GOV) / AE 631EEEE (GOV) / AE 632LLLLL (GOV), Government Consolidated Rebuttal to Defense Oral Arguments Regarding Statements the Accused Made to Law Enforcement, filed 26 May 2026.

¹⁶ ~~(U)~~ See AE 942SSSS Ruling, Mr. al Baluchi's Motion to Suppress Alleged Statements as Involuntary and Obtained by Torture, dated 11 April 2025.

¹⁷ ~~(U)~~ See Transcript of Oral Argument, *United States v. Ali Abdul Aziz Ali*, No. 25-001 (U.S.C.M.C.R. 27 February 2026) at 3-4 ("APPELLATE MJ: [. . .] What's the scope of our *de novo* review? APPELLANT [the Prosecution]: [. . .] You owe no deference to [the military trial judge's] decision on voluntariness. The only thing that you need to look at is his subsidiary findings of fact, none of which we have challenged. APPELLATE MJ: Are we bound by the findings of fact? APPELLANT: You are not, ma'am. We have not alleged any clear errors of fact. But in your *de novo* review, you are certainly not bound by anything that you believe to be clearly erroneous on the record." See also, *id.*, at 8-9 ("APPELLATE MJ: [. . .] So tell me what the government's position is on [. . .] the findings generally. APPELLANT: Yes, Your Honor. So[,] the findings of fact – [. . .] There were 63 pages of facts in the judge's ruling in AE 942[SSSS]. Any time he's weighing those facts [. . .] those are not findings of facts that we have conceded. Those are his conclusions of law on the voluntariness aspect[.] APPELLATE MJ: You mean after the label. He's got the label of findings. You're good with – I think they're page 12 to 71. APPELLANT: Correct.") See also, *id.*, at 14-15 ("APPELLANT: The Supreme Court is clear, Your Honor, that subsidiary findings of fact are generally reviewed for clear error from the military judge. We have not alleged clear error[.]")

~~CUI~~

~~CU~~

Notification (MON) to authorize the Director of Central Intelligence to undertake operations designed to capture and detain persons who pose a continuing, serious threat of violence or death to U.S. persons and interests or who are planning terrorist activities. When the MON was signed, the CIA had in place long-standing formal standards for conducting interrogations. In response to the new environment, the CIA began to develop its own detention and interrogation capabilities, resulting in the CIA building and operating a number of overseas detention facilities. This operation eventually became what is known as the RDI program.¹⁸

B. ~~(U)~~ As part of the RDI program, the CIA developed a list of Enhanced Interrogation Techniques (EITs) to be used in addition to the Standard Interrogation Techniques (SITs). Dr. James Mitchell, a contract psychologist who worked for the CIA, proposed that the EITs be based on techniques used in U.S. military SERE¹⁹ training. SERE training was designed to help prepare U.S. military personnel for the types of coercive interrogation techniques that have been employed in the past by U.S. adversaries to exploit captured U.S. military members. The EITs proposed by Dr. Mitchell were more coercive than the techniques that had been previously used by the CIA and were designed to overcome resistance techniques that were believed to be known by RDI program detainees.²⁰

C. ~~(U)~~ Dr. Mitchell proposed to the CIA a list of twelve SERE techniques: (1) the attention grasp, (2) walling, (3) facial hold, (4) facial slap, (5) cramped confinement, (6) wall standing, (7) stress positions, (8) sleep deprivation, (9) waterboard, (10) use of diapers, (11) use of insects, and (12) mock burial. The CIA considered the proposal and eventually approved use

¹⁸ ~~(U)~~ See AE 942SSSS at 12 ¶ 1.a. (internal citations omitted).

¹⁹ ~~(U)~~ The acronym SERE stands for Survive, Evade, Resist, and Escape.

²⁰ ~~(U)~~ See AE 942SSSS at 12-13 ¶ 1.b. (internal citations omitted).

~~CU~~

~~CUI~~

of certain EITs. The CIA hired Dr. Mitchell and another contract psychologist, Dr. Bruce Jessen, to help develop an interrogation program for use on high-value detainees (HVDs) in CIA custody. Drs. Mitchell and Jessen had both worked with the Air Force SERE school and were well-versed in SERE techniques, although neither were experienced as real-world interrogators.²¹

D. ~~(U)~~ The RDI program was designed to obtain threat and actionable intelligence from detainees. This objective was accomplished by creating in the detainees an exploitable mental state which made them willing to answer questions. The program employed a conditioning strategy over the course of two primary phases: Interrogation and Debriefing.²²

E. ~~(U)~~ During the interrogation phase, coercive pressure in the form of SITs and EITs would be used to undermine the detainee's sense of personal efficacy to continue to resist and to induce a temporary state of helplessness. The interrogation phase used classical conditioning to induce the detainee to associate a signal in their environment with the occurrence of an adverse event. The EITs were the unconditioned stimulus, and the fear the EITs created in the detainee was the unconditioned response. By pairing the EITs with specific cues, the detainee would start to associate the EITs with the cues. The cues could then cause distress to the detainee similar to the distress from the EITs. The program used classical conditioning to raise the detainee's distress, and then used operant conditioning, when the detainee answered questions, to reduce and relieve that distress. In this way, the detainee would experience a sense of relief and a sense of safety by answering questions.²³

²¹ ~~(U)~~ See AE 942SSSS at 13-14 ¶ 1.c. (citations omitted).

²² ~~(U)~~ See *id.* at 14 ¶ 1.d. (internal citations omitted).

²³ ~~(U)~~ See *id.* at 14-15 ¶ 1.e. (internal citations omitted).

~~CUI~~

~~CUI~~

F. ~~(U)~~ The eventual goal was detainee cooperation, elaboration, and spontaneity.

Dr. Mitchell considered detainees to be somewhere on a continuum of resistance. This continuum went from outright refusal to answer a question, to a defensive response to a question, to minimally answering a question, to adding some additional details, to spontaneously answering a question. Spontaneity meant that when asked a question, the detainee would answer the question as fully and completely as possible, even spontaneously volunteering additional information. Questioners would sometimes give a detainee a “bridging question” that would inform the detainee of future areas of questioning so they could think about the topic in their cell and be ready to expound on the topic at the next questioning.²⁴

G. ~~(U)~~ Once a detainee was providing enough useful information to be considered compliant and cooperative, he would be transitioned into the debriefing phase. This phase would involve more operant conditioning by improving the detainees’ environment, for example, giving them better clothes, better food, and opportunities to sleep, to read, and to sit down, to ensure the detainee continued to cooperate. Detainees were trained that the more freely and completely they complied with questioning, the better their situation would become. They were also regularly reminded that a lack of compliance could lead to a worse environment.²⁵

H. ~~(U)~~ Once in a debriefing status, the interviewers would make accommodations with detainees such as trying to avoid prayer time and sometimes even allowing detainees to temporarily decline a debriefing if they were sick or in some kind of distress. Despite these accommodations, detainees were still expected to fully comply with any and all questioning.²⁶

²⁴ ~~(U)~~ See AE 942SSSS at 15-16 ¶ 1.f. (citations omitted).

²⁵ ~~(U)~~ See *id.* at 16 ¶ 1.g. (internal citations omitted).

²⁶ ~~(U)~~ See *id.* at 16 ¶ 1.h. (citation omitted).

~~CUI~~

~~CUI~~

I. ~~(U)~~ A concept that is mentioned continually in reporting from the RDI program is “learned helplessness.” Learned helplessness is a concept developed originally by Dr. Martin Seligman in an experiment where he placed a dog in a cage and electrified the floor. The dog would initially attempt to escape, but if there were no way to escape, the dog would just lay down and accept the shocks. Both Dr. Mitchell and Dr. Jessen explained that they did not want to develop Dr. Seligman’s version of learned helplessness in the detainees because it would mean that they stopped responding. Drs. Mitchell and Jessen wanted the detainees to have a means of escape—cooperation with questioning. In this way, the detainees would not become non-responsive, rather, they would continue to use the techniques they had been taught—that cooperation meant the end of the torture and improvement of their conditions. Unfortunately, many of the CIA officials involved in the RDI did not seem to understand this concept. Thus, when reports mention that a detainee has developed learned helplessness, Dr. Mitchell believed the CIA interrogators meant that the detainee realized they could not resist and were dependent on the interrogators to improve their circumstances. Dr. Jessen thought it meant that the person was feeling generally helpless. The Commission accepts Dr. Mitchell’s [definition] and finds that when RDI personnel reported that [a detained person] was developing learned helplessness, they meant that [the person] was learning that [they] could not resist and [were] completely dependent on [their] captors.²⁷

J. ~~(U)~~ Another term that first arose during testimony is “fear extinction.” A few nights before he testified in 2024, Dr. Mitchell drew a diagram on a hotel napkin explaining a concept called fear extinction. He explained that fear extinction takes place when the unconditioned

²⁷ ~~(U)~~ See AE 942SSSS at 16-17 ¶ 1.i. (internal citations omitted).

~~CUI~~

~~CUI~~

stimulus is no longer paired with the conditioned stimulus. Accordingly, he believed that during the debriefing phase any classical conditioning response, in this case fear, would quickly dissipate. Dr. Mitchell acknowledged that the severity of the fear would correlate to the time it would take for any fear to dissipate. Dr. Charles Morgan, a forensic psychiatrist with extensive experience with SERE, expounded on that concept, testifying that there is a lot of data that fear extinction can occur with non-traumatic events, but that there typically isn't significant fear reduction with traumatic events. He explained that this is why trauma, such as torture, is extraordinarily difficult to treat when a person has psychological consequences, whether it is Post Traumatic Stress Disorder, anxiety, or depression. Dr. Mitchell acknowledged that a response that has been extinguished can nevertheless recover under a variety of circumstances, including just the passage of time, which can lead to the spontaneous recovery of the previous conditioning. The Commission accepts that classically conditioned fear may reduce over time once the fear inducing conditions are removed, but only marginally in the short term.²⁸

K. ~~(U)~~ Regardless of the possible extinction of the classical conditioning, Dr. Mitchell explained that operant conditioning would continue throughout the debriefing stage as long as the reinforcement contingencies are perceived by the detainee.²⁹

(2) ~~(U)~~ Dr. Mitchell described "operant conditioning" as being a process of exploiting the fact "that people will work harder to keep what they've got than they will to gain new stuff."³⁰

(3) ~~(U)~~ Operant conditioning was bolstered by inspiring in detainees a long-term fear that they were subject to being returned to the abusive custody of the CIA RDI program interrogators

²⁸ ~~(U)~~ AE 942SSSS at 17-19 ¶ 1.j. (internal citations omitted).

²⁹ ~~(U)~~ See *id.* at 19 ¶ 1.k. (citation omitted).

³⁰ ~~(U)~~ See Tr. dated 20 February 2024, at 41681.

~~CUI~~

~~CUI~~

who had previously harmed them, and also to have a long-term generalized fear that they might be harmed or lose amenities if they displeased “Washington.”

A. ~~(U)~~ During the debriefing phase, the CIA RDI program acted to “maintain the necessary levels of psychological pressure” to ensure that interrogators remained a “valid threat” in the mind of detainees over the long term.³¹ In that way, detainees were made to believe that, even when they were relatively safe, “interrogators never go away.”³²

B. ~~(U)~~ It was standard, across the CIA RDI program, to warn detainees of adverse consequences if they stopped cooperating once they had begun.³³ Detainees in the debriefing phase of conditioning often “would bring up” their fear of being returned to “hard times.”³⁴

C. ~~(U)~~ CIA interrogators expressly acted to engender in detainees an enduring fear of the broader U.S. government — “we wanted the bad guy to be Washington” — in order to anchor the detainee’s fear in “imagination instead of a direct threat.”³⁵

b. ~~(U)~~ Learned helplessness and fear extinction as applied to Mr. Mohammad.

(1) ~~(U)~~ Having accepted Dr. Mitchell’s definition of what RDI program personnel meant when they used the term “learned helplessness,” this Commission finds that when RDI program personnel reported that they were acting to induce in Mr. Mohammad learned helplessness,³⁶ they meant that they were acting to cause him to learn that he could not resist and that he was completely dependent on his captors.

³¹ ~~(U)~~ See Tr. dated 21 February 2024 at 41846-47.

³² ~~(U)~~ See Tr. dated 21 February 2024 at 41844

³³ ~~(U)~~ See Tr. dated 23 January 2020 at 30715-16.

³⁴ ~~(U)~~ See *id.* at 30743-44.

³⁵ ~~(U)~~ See Tr. dated 20 February 2024, at 41682-83.

³⁶ ~~(U)~~ See AE 630AAAA (GOV), Government Notice of Proposed Stipulation of Fact, filed 29 April 2020 at 66, 79.

~~CUI~~

~~CUI~~

(2) ~~(CUI)~~ Mr. Mohammad is described as demonstrating “a robust resistance” to EITs during the early portion of his tenure in the RDI program, in March 2003. However, even then, the CIA reported that Mr. Mohammad “evidenced signs of yielding to the conditioning process” and that his conditioning process was “progressing as expected.” Further, CIA reporting reflected the Government’s execution of a concerted plan to employ a “dispassionate, focused, unemotional, and relentless style of interrogation,” so that Mr. Mohammad would be “increasingly motivated to make concessions as a means of improving his conditions.”³⁷

(3) ~~(U)~~ Mr. Mohammad was coerced via operant conditioning. As Dr. Mitchell testified, “I mean, that was the plan. The plan was as soon as they start providing cooperation, you phase out the EITs, you switch to operant conditioning only, and you up the amenities. That’s the plan.”³⁸

(4) ~~(U)~~ The CIA RDI program augmented its operant conditioning of Mr. Mohammad by inspiring an enduring fear in him that “Washington,” who was “the bad guy” might be “unhappy” should Mr. Mohammad’s answer to a government agent’s question lack the “details” expected or lack proper “focus.”³⁹

c. ~~(U)~~ **Post-9/11 coordination between the FBI and CIA.** The findings of facts within this subparagraph are adopted from this Commission’s ruling in AE 942SSSS. The Prosecution has waived challenge to these facts, and, further, has conceded that these facts are without clear error.⁴⁰ After the attacks on 11 September 2001, the FBI established a core investigative group

³⁷ ~~(U)~~ See AE 630AAAA (GOV) at 79-80.

³⁸ ~~(U)~~ Tr. dated 20 February 2024, at 41680.

³⁹ ~~(U)~~ Id. at 41683.

⁴⁰ ~~(U)~~ See Transcript of Oral Argument, *United States v. Ali Abdul Aziz Ali*, No. 25-001 (U.S.C.M.C.R. 27 February 2026) at 3-4, 8-9 and 14-15.

~~CUI~~

~~CUI~~

known as the PENTTBOM Team⁴¹ to investigate those responsible for the attacks. Before the 11 September 2001 attacks, the FBI and the CIA operated independently with little overlap. After the attacks, the two organizations substantially increased their cooperation and coordination, to include sharing information and personnel. This cooperation included PENTTBOM team members sending questions to the CIA to be asked of detainees. The CIA would then disseminate the detainees' answers to the intelligence community, including the FBI.⁴²

d. ~~(U)~~ Post-9/11 coordination between the FBI and CIA as applied to Mr. Mohammad.

(1) ~~(U)~~ Both FBI personnel who questioned Mr. Mohammad to obtain his FBI LHM statement—Special Agent (SA) Pellegrino and Intelligence Analyst (IA) Brian Antol—were previously involved with the PENTTBOM team, and both participated in passing questions to the CIA RDI program for use during detainee interrogations.

(2) ~~(U)~~ Following Mr. Mohammad's capture, SA Pellegrino and IA Antol operated jointly at FBI headquarters to receive and review the initial leads and intelligence derived from the capture and the materials seized from Mr. Mohammad's apartment.⁴³

(3) ~~(U)~~ While never formally assigned to the team, SA Pellegrino was an active participant in the PENTTBOM team when the team needed his assistance.⁴⁴ SA Pellegrino utilized an established procedure to send intelligence requests, or "requirements," to FBI headquarters, which were then forwarded to the CIA RDI program for use in detainee

⁴¹ ~~(U)~~ PENTTBOM was an acronym. The letters PEN stood for the 9/11 crash in Pennsylvania. The letters PENT stood for the 9/11 attack on the Pentagon. The letters TT stood for the 9/11 attack on the Twin Towers of the World Trade Center. The letters BOM stood for a terrorist attack or bombing.

⁴² ~~(U)~~ AE 942SSSS at 19-20 ¶ 2.a. (internal citations omitted).

⁴³ ~~(U)~~ Tr. dated 25 September 2023 at 36864; Tr. dated 28 September 2023 at 37245.

⁴⁴ ~~(U)~~ Tr. dated 25 September 2023 at 36859-36860.

~~CUI~~

~~CUI~~

interrogations.⁴⁵ SA Pellegrino did not specify his requirements as being for Mr. Mohammad, but he believed the CIA RDI program interrogators questioning Mr. Mohammad would receive the requirements and they would know what to ask.⁴⁶

(4) ~~(U)~~ IA Antol served as a central coordinating point at FBI Headquarters through which intelligence requirements from SA Pellegrino and the PENTTBOM team were processed, consolidated, and routed to the CIA RDI program to be asked of Mr. Mohammad and other detainees.⁴⁷

(5) ~~(U)~~ When answers were obtained from Mr. Mohammad and other detainees, that intelligence was disseminated by the CIA directly to both IA Antol at FBI Headquarters and SA Pellegrino and the PENTTBOM team in the field, often by placing them concurrently on the distribution lists, pass lines, and 'Tickler Counts' of the resulting CIA cables and summaries.⁴⁸

e. ~~(U)~~ Mr. Mohammad's capture and treatment by a foreign government.

(1) ~~(U)~~ Mr. Mohammad was captured in Pakistan on 1 March 2003 and held in Pakistani custody.⁴⁹

(2) ~~(U)~~ A CIA source led the CIA and Pakistani authorities directly to Mr. Mohammad.⁵⁰

(3) ~~(U)~~ At the time of his capture, CIA reporting obtained from detainee Abu Zubaydah

⁴⁵ ~~(U)~~ Tr. dated 28 September 2023 at 37242.

⁴⁶ ~~(U)~~ Tr. dated 28 September 2023 at 37242-43; *see also* AE 791 (GOV), Government Notice of Proposed Interim Unclassified Findings of Fact, filed 3 April 2020, at 82-83, ¶¶ 556-558 (Dr. Mitchell confirmed that intelligence requirements were sent to CIA RDI program detention facilities for use during detainee interrogations, that it was possible those requirements originated with the FBI, and that it was possible he serviced those requirements during interrogations.)

⁴⁷ ~~(U)~~ Tr. dated 2 October 2023 at 37672-37673, 37704; Tr. dated 3 October 2023 at 37903.

⁴⁸ ~~(U)~~ Tr. dated 2 October 2023 at 37682, 37685, 37711, and 37735.

⁴⁹ ~~(U)~~ *See* S. Rep. No. 113-288, dated 9 December 2014, *Report of the Senate Select Committee on Intelligence Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, Executive Summary ("SSCI Executive Summary") at 81.

⁵⁰ ~~(U)~~ *See id.*

~~CUI~~

~~CUI~~

regarding Mr. Mohammad noted him to be approximately 34 years old and fluent in English.⁵¹

He was described by CIA interrogator, Dr. James Mitchell, as “having a very intelligent mind.”⁵²

(4) ~~(U)~~ While in Pakistani custody, Mr. Mohammad was interrogated by CIA officers and Pakistani officials.⁵³

(5) ~~(U)~~ According to CIA records, while in Pakistani custody, KSM was subjected to some sleep deprivation, but there are no indications of other coercive interrogation techniques being used.⁵⁴

f. ~~(U)~~ Rendition to U.S. custody.

(1) ~~(U)~~ In March 2003, Mr. Mohammad was rendered to U.S. custody at Location 2 (DETENTION SITE COBALT).⁵⁵

(2) ~~(U)~~ Prior to Mr. Mohammad’s arrival at Location 2, the chief of interrogations at the location requested and was granted permission from CIA Headquarters to employ EITs during Mr. Mohammad’s questioning.⁵⁶

(3) ~~(CUI)~~ **Rendition procedures.** The findings of facts within this subparagraph are adopted from this Commission’s ruling in AE 942SSSS. The Prosecution has waived challenge to these facts, and, further, has conceded that these facts are without clear error.⁵⁷ The Government employed standard rendition procedures to move detainees in U.S. custody from

⁵¹ ~~(U)~~ See SSCI Executive Summary at 25.

⁵² ~~(U)~~ See AE 791 (GOV) at 100, ¶ 710.

⁵³ ~~(U)~~ See SSCI Executive Summary at 81.

⁵⁴ ~~(U)~~ See *id.*

⁵⁵ ~~(U)~~ See *id.* at 81-82; see also Tr. dated 31 January 2020 at 32488-89 (The SSCI Executive Summary refers to Location 2 by the codename DETENTION SITE COBALT).

⁵⁶ ~~(U)~~ See *id.*

⁵⁷ ~~(U)~~ See Transcript of Oral Argument, *United States v. Ali Abdul Aziz Ali*, No. 25-001 (U.S.C.M.C.R. 27 February 2026) at 3-4, 8-9 and 14-15.

~~CUI~~

~~CUI~~

one detention facility to another. Those standard rendition procedures consisted of a body cavity search, being placed into a jumpsuit, being blindfolded, having suppressors placed over the ears to prevent hearing ambient sounds, having the mouth covered to prevent communication, having hands and ankles shackled, being diapered, and being strapped into a seat or strapped to the floor like cargo for however long the rendition flight lasted.⁵⁸

g. ~~(U)~~ **Location 2.** The findings of facts within this subparagraph are adopted from this Commission's ruling in AE 942SSSS. The Prosecution has waived challenge to these facts, and, further, has conceded that these facts are without clear error.⁵⁹ Location 2 was like a dungeon, looked like an old Nazi concentration camp, and something out of a horror show. Detainees at Location 2 were kept shackled in cells resembling horse stalls. The cellblock windows were covered with two coats of black paint and heavy curtains making the cellblock completely dark. Location 2 smelled unpleasant, and the detainees had a stench that was like no other, enhanced by their fear. Stereo speakers would barrage the detainee with non-stop loud music. When guards moved a detainee from their cell to the interrogation room, they would usually enter the cell with a flashlight and place a hood over the detainee's head. The guards, masked and dressed in black, would not speak with detainees and would only communicate with each other nonverbally with hand signals. The only object detainees had in their stall was a bucket for human waste. One senior CIA officer stated Location 2 was itself an enhanced interrogation technique. Location 2 was set up with isolation of the detainee being the primary goal. Each detainee's interaction with the outside world was intended to be limited to brief contact with the guards and more extensive

⁵⁸ ~~(U)~~ AE 942SSSS at 41 ¶ 5.a. (internal citations omitted).

⁵⁹ ~~(U)~~ See Transcript of Oral Argument, *United States v. Ali Abdul Aziz Ali*, No. 25-001 (U.S.C.M.C.R. 27 February 2026) at 3-4, 8-9 and 14-15.

~~CUI~~

~~CUI~~

contact with his CIA interrogators. This allowed CIA personnel to control almost all aspects of the detainees' existence.⁶⁰ The conditions at Location 2 were so harsh that one detainee, Gul Rahman, died in 2002 of hypothermia, after being left overnight in cold temperatures wearing only a sweatshirt and after having been doused in cold water.⁶¹

h. ~~(U)~~ Mr. Mohammad's experience at Location 2.

(1) ~~(U)~~ In March 2003, Mr. Mohammad was rendered to CIA custody and transferred to Location 2.⁶²

(2) ~~(U)~~ CIA interrogators began using EITs a few minutes after the questioning began.⁶³ The EITs consisted of facial and abdominal slaps, the facial grab, stress positions, standing sleep deprivation with hands at or above head level, nudity, water dousing, and rectal rehydration without a determination of medical need. On 5 and 6 March 2003, Mr. Mohammad was again subjected to nudity and sleep deprivation. Further, on 5 March 2003, Mr. Mohammad was subjected to additional rectal rehydration without determination of medical need.⁶⁴

(3) ~~(U)~~ Mr. Mohammad was not provided with a toilet in his cell at Location 2; he was provided a bucket for his waste.⁶⁵

(4) ~~(U)~~ The full extent of Mr. Mohammad's experience at Location 2 remains unknown, as the site was later found to have not reported multiple uses of sleep deprivation, required standing, loud music, sensory deprivation, extended isolation, reduced quantity and quality of

⁶⁰ ~~(U)~~ AE 942SSSS at 22-23 ¶ 4.a.(1) (internal citations and brackets omitted).

⁶¹ ~~(U)~~ See *id.* at 23 ¶ 4.a.(2) (citation omitted).

⁶² ~~(U)~~ See SSCI Executive Summary at 81.

⁶³ ~~(U)~~ See *id.* at 82.

⁶⁴ ~~(U)~~ See *id.* at 82-83.

⁶⁵ ~~(U)~~ See AE 791 (GOV) at 94, ¶ 657.

~~CUI~~

~~CUI~~

food, nudity, and rough treatment of detainees.⁶⁶

i. ~~(U)~~ **Location 4 (DETENTION SITE BLUE).**⁶⁷

(1) ~~(U)~~ Location 4 consisted of three purpose-built “holding units” that were initially designed to hold two detainees but were used to hold five.”⁶⁸

(2) ~~(CUI)~~ Of the five cells at Location 4, one was essentially a cage, and the floor of the smallest cell measured 6 feet by 8 feet.⁶⁹

(3) ~~(U)~~ The detainees were kept separate, and both music and white noise (a constant hum) were played to eliminate the possibility of communication between the detainees.⁷⁰

(4) ~~(CUI)~~ The detainees were provided with a bed, a plastic chair, a blanket, toilet tissue paper, and a bucket. Access to additional items was conditioned on cooperation.⁷¹

j. ~~(U)~~ **Mr. Mohammad’s experience at Location 4.**

(1) ~~(CUI)~~ In March 2003, the CIA rendered Mr. Mohammad to Location 4.⁷²

(2) ~~(CUI)~~ Medical and psychological personnel who traveled with Mr. Mohammad from Location 2 evaluated him and approved the use of EITs at Location 4.⁷³

(3) ~~(CUI)~~ Upon arrival to Location 4, Mr. Mohammad was “immediately stripped and placed in the standing sleep deprivation position.”⁷⁴ He was made to remain nude until

⁶⁶ ~~(U)~~ See SSCI Executive Summary at 51.

⁶⁷ ~~(U)~~ See Tr. dated 27 January 2020 at 31371-72 (The SSCI Executive Summary refers to Location 4 by the codename DETENTION SITE BLUE).

⁶⁸ ~~(U)~~ See SSCI Executive Summary at 62.

⁶⁹ ~~(U)~~ See AE 630AAAA (GOV) at 64.

⁷⁰ ~~(U)~~ See AE 791 (GOV) at 94, ¶ 659, 661.

⁷¹ ~~(U)~~ See AE 630AAAA (GOV) at 64.

⁷² ~~(U)~~ See *id.* at 63.

⁷³ ~~(U)~~ See AE 630AAAA (GOV) at 84.

⁷⁴ ~~(U)~~ See *id.*

~~CUI~~

~~CUI~~

interrogators determined that he should be clothed.⁷⁵

(4) ~~(U)~~ Mr. Mohammad was not provided with a toilet in his cell; he was provided with a bucket for his waste and made to wear diapers.⁷⁶

(5) ~~(U)~~ Between the date of his rendition to Location 4 and 9 March 2003, CIA contractors and a CIA interrogator used EITs against Mr. Mohammad, including “nudity, standing sleep deprivation, the attention grab and insult slap, the facial grab, the abdominal slap, the kneeling stress position, and walling.”⁷⁷

(6) ~~(U)~~ Mr. Mohammad was ultimately waterboarded at least 183 times.⁷⁸ On 10 March 2003, Mr. Mohammad underwent 15 separate waterboarding sessions. The first of those sessions lasted 30 minutes, which was 10 minutes longer than the period anticipated by the CIA’s Office of Legal Counsel, and was followed by the use of a horizontal stress position that had not previously been approved by CIA Headquarters.⁷⁹ During the first of three waterboarding sessions that day, interrogators responded to Mr. Mohammad’s efforts to breathe by holding his lips and directing the water at his mouth.⁸⁰ During these sessions, Mr. Mohammad ingested a significant amount of water. CIA records state that his abdomen was somewhat distended and he expressed water when the abdomen was pressed.⁸¹

(7) ~~(U)~~ While at Location 4, in order to mark Mr. Mohammad’s transitioning out of the phase where EITs were inflicted, and into the debriefing stage and operant conditioning, after

⁷⁵ ~~(U)~~ See AE 791 (GOV) at 94, ¶ 655.

⁷⁶ ~~(U)~~ See *id.*, ¶ 656.

⁷⁷ ~~(U)~~ See SSCI Executive Summary at 84-85.

⁷⁸ ~~(U)~~ See *id.* at 85.

⁷⁹ ~~(U)~~ See *id.* at 85.

⁸⁰ ~~(U)~~ See *id.* at 87.

⁸¹ ~~(U)~~ See SSCI Executive Summary at 86.

~~CUI~~

~~CUI~~

consulting carefully with government attorneys,⁸² the CIA had Dr. Mitchell, the RDI program interrogator who had inflicted EITs upon Mr. Mohammad at Location 2, make a deliberate threat: “if there is another catastrophic attack in the United States and I find out that you had information that would have prevented that attack, allowed us to stop it, and another American child is killed, then I will cut your son’s throat.”⁸³ This was done with the knowledge that it would instill fear in Mr. Mohammad.⁸⁴

k. ~~(U)~~ **DETENTION SITE BLACK.**

(1) ~~(U)~~ DETENTION SITE BLACK was also known as Location 7.⁸⁵

(2) ~~(CUI)~~ Location 7 was constructed of concrete blocks, with covered windows.⁸⁶

(3) ~~(CUI)~~ The HVD containment portion of Location 7 consisted of six cells, grouped into two pods of three cells each.⁸⁷

(4) ~~(CUI)~~ White noise generators were installed to prevent communication between detainees.⁸⁸ Each cell was free standing with a reinforced concrete slab floor elevated on rubber feet to eliminate sound transmission, and the walls were constructed of gypsum board with acoustic fiberglass insulation. The cell door was certified to diminish sound transmission. Interview rooms were fitted with sound abatement walls and a two-way mirror.⁸⁹

⁸² ~~(U)~~ See Tr. dated 21 February 2024 at 41753.

⁸³ ~~(U)~~ See Tr. dated 27 January 2020 at 31362; AE 791 (GOV) at 97, ¶ 685.

⁸⁴ ~~(U)~~ See *id.* at 31364.

⁸⁵ ~~(U)~~ ~~(CUI)~~ See AE 630AAAA (GOV) at 334 (specifying that, in September 2003, Mr. Mohammad was rendered to Location No. 7); *compare with* SSCI Executive Report at 95 (citing a CIA cable dated 11 November 2003 identifying the location where Mr. Mohammad was being held as “DETENTION SITE BLACK”).

⁸⁶ ~~(U)~~ See *id.* at 334.

⁸⁷ ~~(U)~~ See *id.*

⁸⁸ ~~(U)~~ See AE 630AAAA (GOV).

⁸⁹ ~~(U)~~ See SSCI Executive Summary at 335.

~~CUI~~

~~CUI~~**1. ~~(U)~~ Mr. Mohammad's experience at DETENTION SITE BLACK.**

(1) ~~(CUI)~~ In September 2003, Mr. Mohammad told CIA personnel at Location 7 (DETENTION SITE BLACK) that he understood he “was in the hands of the [United States Government],” that “he would never again be a free man,” and that “he could and would be subjected to harsh treatment if he resisted answering questions, and thus would have to cooperate with his captors.” Mr. Mohammad told CIA interrogators that detainees in his situation must “accept their fate” in these regards in order to have “structure and meaning to their lives.”⁹⁰

(2) ~~(U)~~ On 11 November 2003, Mr. Mohammad was present at DETENTION SITE BLACK.⁹¹

(3) ~~(CUI)~~ By December 2003, Mr. Mohammad was afforded the opportunity to engage in conversations concerning United States history with CIA personnel other than interrogators at Location 7. The conversations were held in the interrogation room and Mr. Mohammad was allowed to be seated in a chair, rather than a stool. His wrist shackles were removed (leaving in place his leg shackles), and he was offered tea and “sweets of some kind, lately dates, [were] offered (and never declined).”⁹² CIA personnel reported that these conversations yielded “modest yet promising changes in Mohammad’s overall demeanor and attitude” and resulted in the “volunteering of additional information” of a “vital and pivotal” nature regarding unrelated intelligence requirements, “without tasking.”⁹³ CIA reporting shows that Government’s “intend[ed] to [. . .] use [such] encounters as an opportunity to continue to build rapport with the

⁹⁰ ~~(U)~~ See *id.* at 337.

⁹¹ ~~(U)~~ See SSCI Executive Summary at 95 (citing a CIA cable dated 11 November 2003 stating that, by that date, Mr. Mohammad had undergone a “transfer to DETENTION SITE BLACK[.]”)

⁹² ~~(U)~~ See SSCI Executive Summary at 343-44.

⁹³ ~~(U)~~ See *id.* at 344.

~~CUI~~

~~CUI~~

detainees so that instances like that cited above [. . .] [would] become first more frequent and then no longer necessary as the detainee regularly provides full and complete details in response to every question posed.”⁹⁴

(4) ~~(CUI)~~ Reporting from CIA personnel at Location 7 in December 2003 noted that Mr. Mohammad did not know the name of his eighth child, who was born while Mr. Mohammad was in captivity, and that “the fate of his children continues to be a soft spot for Mohammad.”⁹⁵

(5) ~~(CUI)~~ On 22 January 2004, Mr. Mohammad was interrogated at Location 7 by a team that included “interrogators previously known to Mohammad from early enhanced sessions.” In response “Mr. Mohammad displayed signs of apprehension, including shaking hands, frequent swallowing, [] a nervous smile [. . . and] a nervous shaking of his legs[.]”⁹⁶ CIA personnel noted that “while there were no overt threats made to Mohammad, he voiced his understanding that the presence of his initial interrogation team did not bode well.”⁹⁷ Nonetheless, the CIA psychologist observing that interrogation noted that, “despite his obvious nervousness,” Mr. Mohammad “spoke spontaneously and elaborated appropriately,” he “maintained good eye contact,” his “thinking was clear and goal-directed,” and “he showed no evidence of significant psychological distress in the form of hallucinations, delusions, or symptoms of post-traumatic stress.”⁹⁸

⁹⁴ ~~(S)~~ See *id.* at 345.

⁹⁵ ~~(S)~~ See *id.* at 347.

⁹⁶ ~~(S)~~ See *id.* at 352-53.

⁹⁷ ~~(S)~~ See *id.* at 353.

⁹⁸ ~~(S)~~ See SSCI Executive Summary at 354.

~~CUI~~

~~CUJ~~

(6) ~~(CUJ)~~ In July of 2004, Mr. Mohammad “appear[ed] engaged in the process, and participate[d] fully” in the CIA RDI program. CIA personnel reported that Mr. Mohammad “understands that his job is to provide answers to questions[.]”⁹⁹

(7) ~~(CUJ)~~ In August of 2004, CIA interrogators started an “alternative debriefing” regime for Mr. Mohammad, “as an occasional complement to standard debriefings.”¹⁰⁰ This modified interrogation approach involved questioning Mr. Mohammad on “the history and future of al-Qa’ida” rather than merely questioning him on discrete matters.¹⁰¹ This change in interrogation strategy was “identified as a component of the CTC/RDG exploitation plan for Mohammad [. . . as] a means to both exploit personal characteristics of Mohammad and to maintain his engagement level in [the CIA’s] process over the long term.”¹⁰²

m. ~~(U)~~ **ADDITIONAL DETENTION SITE.**¹⁰³

(1) ~~(CUJ)~~ The cells at Location 8 were fabricated of concrete and steel, equipped with a stainless-steel toilet, a sink with running water, and a shower. One wall of each cell was made of heavy-duty steel mesh. None of the cells contained windows.¹⁰⁴

(2) ~~(CUJ)~~ Public address system speakers in the hallway outside the cells at Location 8 were used to disrupt communication between the detainees. Two of the four interrogation rooms at Location 8 contained plastic chairs separated by a table. The remaining two interrogation

⁹⁹ ~~(U)~~ See *id.* at 379.

¹⁰⁰ ~~(U)~~ See *id.* at 369.

¹⁰¹ ~~(U)~~ See *id.* at 377.

¹⁰² ~~(U)~~ See *id.* at 369-70.

¹⁰³ ~~(U)~~ See SSCI Executive Summary at 95-96 (stating that “after KSM’s transfer to DETENTION SITE BLACK, [. . .] KSM was transferred to DETENTION SITE _ on _, 2005, to DETENTION SITE BROWN on March _, 2006, and to U.S. military detention at Guantanamo Bay, Cuba, on September 5, 2006.”)

¹⁰⁴ ~~(U)~~ See AE 630AAAA (GOV) at 382.

~~CUJ~~

~~CUI~~

rooms contained a plush carpet and a wall mural depicting an ocean-front view. The facility contained an exercise area equipped with cardiovascular exercise equipment, a soccer ball, a Pilates ball, and a medicine ball.¹⁰⁵

n. ~~(U)~~ **Mr. Mohammad's experience at the ADDITIONAL DETENTION SITE.**

(1) ~~(U)~~ In 2005, Mr. Mohammad was rendered to an additional detention site.¹⁰⁶

(2) ~~(CUI)~~ Specifically, in October 2005, Mr. Mohammad was rendered to Location 8 (DETENTION SITE VIOLET).¹⁰⁷

(3) ~~(CUI)~~ The basic amenities provided to Mr. Mohammad at Location 8 included a mattress, two pillows, two blankets, toilet paper, a comb, a large towel, two medium towels, a wash cloth, a tooth brush and tooth paste, bar soap, shampoo, a Quran, prayer rug, prayer cap, monthly prayer schedule, plastic spoon, water bottle, salt shaker with salt, pepper shaker with pepper, squeeze bottle of honey, squeeze bottle of ketchup, plastic table, plastic stool, plastic chair, air freshener, clock, live plant, plant stand, two t-shirts, pair socks, pair sweat pants, sweat shirt, pair shorts, pair slippers, pair sneakers, poster of an outdoor scene or other requested and approved art, mirror, carpet shower mat, wrist watch face, and crayons.¹⁰⁸

(4) ~~(CUI)~~ A January 2006 psychological evaluation of Mr. Mohammad at Location 8 noted "signs of frustration and fatigue with the monotonous day to day routine of detention," the

¹⁰⁵ ~~(U)~~ See AE 630AAAA (GOV) at 383.

¹⁰⁶ ~~(U)~~ See SSCI Executive Summary at 96.

¹⁰⁷ ~~(CUI)~~ See AE 630AAAA (GOV) at 382 (stating that, in October 2005, Mr. Mohammad was rendered to Location No. 8); compare with AE 942SSSS at 48 ¶ 7.a (identifying Location 8 as DETENTION SITE VIOLET).

¹⁰⁸ ~~(U)~~ See *id.* at 384-85.

~~CUI~~

~~CUJ~~

development of “a tendency to withdraw more and more from social interaction,” but also “at the same time he is withdrawing[,] Khalid Sh[a]ikh Mohammad is seeking more social attention.”¹⁰⁹

o. ~~(U)~~ Mr. Mohammad’s detention at DETENTION SITE BROWN.¹¹⁰

(1) ~~(U)~~ In March 2006, the CIA rendered Mr. Mohammad to DETENTION SITE BROWN.¹¹¹

(2) ~~(CUJ)~~ DETENTION SITE BROWN is Location 9.¹¹²

(3) ~~(CUJ)~~ Mr. Mohammad’s cell at Location 9 was equipped with a shower, a toilet, sink, hot and cold running water, and the ability to adjust temperature.¹¹³

(4) ~~(CUJ)~~ A psychological assessment in April 2006 noted that Mr. Mohammad was “experiencing less in the way of minor frustrations described in the past” but talked of “getting homesick” and having “thoughts of his family time to time.”¹¹⁴

(5) ~~(CUJ)~~ A psychological assessment in July 2006 noted that Mr. Mohammad had “made good adjustment to his confinement,” was “cooperative,” that he “continues to do well in detention” and therefore “should continue to receive all provided amenities.”¹¹⁵

(6) ~~(CUJ)~~ During interrogations conducted in June and July 2006, Mr. Mohammad was noted to be “cooperative,” “forthcoming,” “pleasant,” “open,” and “cordial,”¹¹⁶

¹⁰⁹ ~~(U)~~ See AE 630AAAA (GOV) at 387.

¹¹⁰ ~~(U)~~ See SSCI Executive Summary at 96 (noting that Mr. Mohammad underwent a transfer to “DETENTION SITE BROWN [in] March 2006[.]”)

¹¹¹ ~~(U)~~ See *id.*

¹¹² ~~(CUJ)~~ See AE 630AAAA (GOV) at 389. Stating that, in March 2005, Mr. Mohammad was rendered to Location No. 9; see also SSCI Executive Summary at 96 (noting that Mr. Mohammad was transferred to DETENTION SITE BROWN on that date).

¹¹³ ~~(U)~~ See *id.* at 391-92.

¹¹⁴ ~~(U)~~ See *id.* at 392-94.

¹¹⁵ ~~(U)~~ *Id.* at 394-96.

¹¹⁶ ~~(U)~~ AE 630AAAA (GOV) at 396-97.

~~CUJ~~

~~CUI~~

p. ~~(U)~~ **Detention at NSGB, Cuba, beginning in September 2006.**¹¹⁷

(1) ~~(U)~~ The findings of facts within this subparagraph are adopted from this Commission's ruling in AE 942SSSS. The Prosecution has waived challenge to these facts, and, further, has conceded that these facts are without clear error.¹¹⁸

A. ~~(U)~~ In September 2006, 14 high value detainees (HVDs), including Mr. Mohammad,¹¹⁹ were rendered to NSGB. The Camp VII Commander met the HVD detainees at the NSGB airfield.¹²⁰

B. ~~(U)~~ The Camp VII Commander told the detainees that they were at NSGB, in the custody of the Department of Defense (DoD) and that the camp operations were consistent with Geneva Convention Common Article 3.¹²¹

C. ~~(U)~~ The Camp VII Commander later met individually with each HVD to explain the camp rules.¹²²

D. ~~(CUI)~~ During this communication, [REDACTED]

[REDACTED],¹²³

E. ~~(U)~~ Confinement conditions at NSGB were markedly similar to those at previous RDI locations.¹²⁴

¹¹⁷ ~~(U)~~ See SSCI Executive Summary at 96.

¹¹⁸ ~~(U)~~ See Transcript of Oral Argument, *United States v. Ali Abdul Aziz Ali*, No. 25-001 (U.S.C.M.C.R. 27 February 2026) at 3-4, 8-9 and 14-15.

¹¹⁹ ~~(U)~~ See SSCI Executive Summary at 96.

¹²⁰ ~~(U)~~ AE 942SSSS at 61 ¶ 10.a.(1) (citations omitted).

¹²¹ ~~(U)~~ *Id.*

¹²² ~~(U)~~ *Id.*

¹²³ ~~(CUI)~~ *Id.*

¹²⁴ ~~(U)~~ AE 942SSSS.

~~CUI~~

~~CUI~~

F. ~~(U)~~ The cells were configured [REDACTED]

[REDACTED] Detainees were subjected to [REDACTED] light at NSGB.¹²⁵

G. ~~(U)~~ Dr. WK5I was the Camp VII psychiatrist prior to the arrival of the HVDs to NSGB and remained in that position until sometime after the FBI LHM questioning. She modeled the Camp VII mental health program off other confinement environments. In January 2007, Dr. WK5I reported to her leadership that she was concerned about the mental degradation of the detainees at Camp VII because of their isolation and lack of stimulation. She recommended that they be allowed more contact with other detainees to combat the adverse mental health effects stemming from their isolation. Camp leadership agreed with her about these concerns and also recommended less isolation for the detainees. Psychiatrists who took over the program after Dr. WK5I also raised the same concerns.¹²⁶

H. ~~(U)~~ A number of the HVD detainees reported that the conditions at Camp VII were harsher than what they had experienced at their previous RDI facility.¹²⁷

(2) ~~(U)~~ Conditions of confinement in Camp VII generally included employing detainee movement procedures to transport them to other locations on NSGB such as Echo II, using sensory deprivation measures, using shackles, and the presence of specific individuals and objects that the detainee might associate with their prior CIA custody.¹²⁸

q. ~~(U)~~ **Mr. Mohammad's FBI LHM questioning at NSGB, Cuba.**

¹²⁵ ~~(U)~~ *Id.* at 61 ¶ 10.a.(2) (citations omitted).

¹²⁶ ~~(U)~~ *Id.* at 62 ¶ 10.a.(4) (citations omitted).

¹²⁷ ~~(U)~~ *Id.* at 63 ¶ 10.a.(6) (citations omitted).

¹²⁸ ~~(U)~~ See Tr. dated 13 May 2024 at 47360-63 (wherein the Prosecution elicited testimony from Dr. WK5I, the Camp VII Psychiatrist, who confirmed that she observed each of these items or methods while Camp VII and that their presence did not cause the detainees to respond fearfully or with uncontrollable stress.)

~~CUI~~

~~(U)~~

(1) ~~(U)~~ The HVD PTF. The findings of facts within this subparagraph are adopted from this Commission's ruling in AE 942SSSS. The Prosecution has waived challenge to these facts, and, further, has conceded that these facts are without clear error.¹²⁹ The HVDs were questioned by members of an interagency organization called the HVD PTF, which included participants from the CIA, FBI, and DoD, among other agencies. Prosecutors from the Office of Military Commissions were present at NSGB and available to the HVD PTF agents for consultation during breaks in the FBI LHM questioning.¹³⁰

(2) ~~(U)~~ Echo II.

A. ~~(U)~~ Camp VII was the primary housing location for HVDs, including Mr. Mohammad.¹³¹ Echo II was located away from Camp VII.¹³²

B. ~~(U)~~ The findings of facts within this subparagraph are adopted from this Commission's ruling in AE 942SSSS. The Prosecution has waived challenge to these facts, and, further, has conceded that these facts are without clear error.¹³³ The FBI LHM questioning of the HVDs by the HVD PTF occurred in a small camp onboard NSGB, called Echo II.¹³⁴ Escort to Echo II was via guards in military uniforms.¹³⁵ The HVDs were questioned in a single-person cell or hut [REDACTED]¹³⁶ The HVDs were [REDACTED]

¹²⁹ ~~(U)~~ See Transcript of Oral Argument, *United States v. Ali Abdul Aziz Ali*, No. 25-001 (U.S.C.M.C.R. 27 February 2026) at 3-4, 8-9 and 14-15.

¹³⁰ ~~(U)~~ AE 942SSSS at 65-66 ¶ 10.c.(1) (citations omitted).

¹³¹ ~~(U)~~ See Tr. dated 1 November 2019 at 28587-92.

¹³² ~~(U)~~ See Tr. dated 1 November 2019 at 28591, 28597; Tr. dated 31 July 2024 at 49234, 49297; Tr. dated 30 July 2024 at 49107; Tr. dated 31 July 2024 at 49241.

¹³³ ~~(U)~~ See Transcript of Oral Argument, *United States v. Ali Abdul Aziz Ali*, No. 25-001 (U.S.C.M.C.R. 27 February 2026) at 3-4, 8-9 and 14-15.

¹³⁴ ~~(U)~~ AE 942SSSS at 67 ¶ 10.c.(3) (internal citations omitted).

¹³⁵ ~~(U)~~ *Id.*

¹³⁶ ~~(U)~~ *Id.*

~~(U)~~

~~CUI~~

[REDACTED] inside the Echo II cell.¹³⁷ [REDACTED]

[REDACTED]

[REDACTED] Echo II had previously been used by the CIA to detain HVDs.¹³⁸

(3) ~~(U)~~ General nature of the FBI LHM questioning. The findings of facts within this subparagraph are adopted from this Commission's ruling in AE 942SSSS. The Prosecution has waived challenge to these facts, and, further, has conceded that these facts are without clear error.¹³⁹ HVD PTF agents were given access to "buckets" of CIA reporting that had been disseminated out about each RDI program detainee, or from each RDI program detainee.¹⁴⁰ For the FBI LHM questioning, HVD PTF agents were directed to use an admonishment form prepared by the Department of Justice specifically for the HVDs. The agents were instructed not to read *Miranda* rights to the HVDs. The agents conducting the FBI LHM questioning described the lack of *Miranda* warnings as different from their normal practice.¹⁴¹

(4) ~~(U)~~ Details of the FBI LHM questioning of Mr. Mohammad.

A. ~~(U)~~ The evening prior to questioning, a guard force member in Camp VII, where Mr. Mohammad was held, informed Mr. Mohammad that he had a meeting the next day but did not tell him that the meeting was for questioning.¹⁴²

¹³⁷ ~~(CU)~~ *Id.*

¹³⁸ ~~(U)~~ *Id.*

¹³⁹ ~~(U)~~ See Transcript of Oral Argument, *United States v. Ali Abdul Aziz Ali*, No. 25-001 (U.S.C.M.C.R. 27 February 2026) at 3-4, 8-9 and 14-15.

¹⁴⁰ ~~(U)~~ See AE 942SSSS at 66 ¶ 10.c.(2) (citations omitted).

¹⁴¹ ~~(U)~~ See *id.* at 67-68 ¶¶ 10.c.(6) and 10.c.(7) (citations omitted).

¹⁴² ~~(U)~~ See AE 791B (GOV) at 64-66 ¶¶ 386 and 392.

~~CUI~~

~~CUI~~

B. ~~(U)~~ Mr. Mohammad was questioned on 12, 13, 14, and 16 January 2007.¹⁴³

Questioning on each day was for three to four hours, depending on how Mr. Mohammad was feeling.¹⁴⁴

C. ~~(CUI)~~ Confinement facility logs from 12 January 2007, the first day of questioning, reflect that, at 9:45 in the morning, Mr. Mohammad was “shackled and removed from cell [. . .] prior to transport to off-site *medical* appointment.”¹⁴⁵ He was returned to his cell at 1:26 in the afternoon.¹⁴⁶

D. ~~(CUI)~~ Confinement facility logs from 13 January 2007 reflect that, at 9:35 in the morning, Mr. Mohammad was “shackled and removed from cell for transport to off-site appointment.”¹⁴⁷ He was returned to his cell at 2:45 in the afternoon.¹⁴⁸

E. ~~(CUI)~~ Confinement facility logs from 14 January 2007 reflect that, at 9:20 in the morning, Mr. Mohammad was “shackled and removed from cell [. . .] [and] was escorted for transportation to off-site appointment.”¹⁴⁹ He was returned to his cell at 2:30 in the afternoon.¹⁵⁰

F. ~~(CUI)~~ Confinement facility logs from 15 January 2007 reflect that, at 4:40 in the morning, Mr. Mohammad requested “to delay off-site appointment” because he was “not feeling well.”¹⁵¹

¹⁴³ ~~(U)~~ See Tr. dated 25 September 2023 at 36762.

¹⁴⁴ ~~(U)~~ See Tr. dated 25 September 2023 at 36785.

¹⁴⁵ ~~(U)~~ See AE 630E (KSM) at 84 (emphasis added).

¹⁴⁶ ~~(U)~~ *Id.* at 83.

¹⁴⁷ ~~(U)~~ *Id.* at 83.

¹⁴⁸ ~~(U)~~ *Id.* at 83.

¹⁴⁹ ~~(U)~~ AE 630E (KSM) at 82.

¹⁵⁰ ~~(U)~~ *Id.* at 82.

¹⁵¹ ~~(U)~~ *Id.* at 81-82.

~~CUI~~

~~CU~~

G. ~~(CU)~~ Confinement facility logs from the last day of questioning, 16 January 2007, reflect that, at 9:42 in the morning, Mr. Mohammad was “shackled and removed from cell for transport to off-site appointment.”¹⁵² He was returned to his cell at 2:33 in the afternoon.¹⁵³

H. ~~(CU)~~ Confinement facility logs from 17 January 2007 reflect that, at 5:05 in the morning, Mr. Mohammad “stated that he did not want to attend the morning meeting at 0930.”¹⁵⁴

I. ~~(U)~~ Mr. Mohammad was placed in chains upon removal from his cell in Camp VII.¹⁵⁵

J. ~~(U)~~ Mr. Mohammad was transported from his cell in Camp VII to Echo II in a detainee movement vehicle specifically for the questioning.¹⁵⁶

K. ~~(U)~~ Guards personally selected for the duty and designated as “Task Force Platinum” transported Mr. Mohammad to Echo II for questioning and remained posted outside of the room during the questioning.¹⁵⁷

L. ~~(U)~~ Upon arrival at Echo II, Mr. Mohammad was seated alone in the interrogation room and shackled.¹⁵⁸

M. ~~(U)~~ During the interrogation, SA Pelligrino and IA Antol sat in chairs at and across a table from Mr. Mohammad, and a third agent, Elmer Mason, who was approximately 5 feet 10 inches to 6 feet tall and muscular, sat behind the other interviewing agents, about 6 to 8

¹⁵² ~~(U)~~ *Id.* at 81.

¹⁵³ ~~(U)~~ *Id.* at 80.

¹⁵⁴ ~~(U)~~ *Id.* at 80.

¹⁵⁵ ~~(U)~~ *See* AE 791B (GOV) at 89, Attach. C, ¶ 502.

¹⁵⁶ ~~(U)~~ *See id.* at 64, ¶ 382.

¹⁵⁷ ~~(U)~~ *See* Tr. dated 25 September 2023 at 36769; AE 791 (GOV) at 64, ¶¶ 381-84.

¹⁵⁸ ~~(U)~~ *See* Tr. dated 25 September 2023 at 36769; Tr. dated 26 September 2023 at 36957-58.

~~CU~~

~~CUI~~

feet from the table.¹⁵⁹ The bulk of the questioning was by SA Pelligrino, with IA Antol asking questions on occasion, and Mr. Mason not often asking questions.¹⁶⁰

N. ~~(U)~~ On the first day of questioning, during introductions, Mr. Mohammad told agents that he understood he had been transferred from CIA custody to that of the “Army” and relayed his opinion that he was “a slave.”¹⁶¹ Agents chose to omit this statement from the FBI LHM.¹⁶²

O. ~~(U)~~ Prior to questioning, Mr. Mohammad was advised by representatives of the International Committee of the Red Cross (ICRC) that he should be given an attorney during questioning. However, when Mr. Mohammad asked questioners whether he had the right to an attorney, the questioners told him that he did not have a right to an attorney because, while he was charged with other offenses in federal district court, he had not yet been charged with the offenses in this case.¹⁶³

P. ~~(U)~~ Mr. Mohammad was permitted to negotiate the length and timing of the questioning,¹⁶⁴ similarly to how he had been permitted to negotiate the terms of his cooperation with CIA RDI program interrogators.¹⁶⁵

¹⁵⁹ ~~(U)~~ See Tr. dated 26 September 2023 at 36958-63.

¹⁶⁰ ~~(U)~~ See *id.* at 36964.

¹⁶¹ ~~(U)~~ See Tr. dated 26 September 2023 at 36933-34.

¹⁶² ~~(U)~~ See *id.* at 36937-38.

¹⁶³ ~~(U)~~ See Tr. dated 25 September 2023 at 36906-07; Tr. dated 28 September 2023 at 36785-86; and AE 791 (GOV) at 72, ¶ 425.

¹⁶⁴ ~~(U)~~ See Tr. dated 25 September 2023 at 36780.

¹⁶⁵ ~~(U)~~ See AE 791 (GOV) at 97 ¶ 687 (Mr. Mohammad was permitted to set up “office hours” while in the RDI program, even to the extent of being permitted to post a sign to indicate for interrogators whether his “office” was open or closed); *id.* at 96 ¶ 677 (Mr. Mohammad was permitted by RDI program interrogators to dictate their syntax and question format so that he would be able to answer their questions without offending the dictates of his religious beliefs); *id.* at 101 ¶ 715 (Mr. Mohammad was permitted by RDI program interrogators to participate in questioning via a lecture format, where he was the lecturer); *id.* at 98 ¶ 688 (Mr. Mohammad was permitted by RDI program interrogators to dictate the scheduling of interrogations so as to accommodate his religious practice); *id.* at 98 and

~~CUI~~

~~CUI~~

Q. ~~(U)~~ Mr. Mohammad declined to be questioned on 15 January 2007 because he was not feeling well.¹⁶⁶ On 17 January 2007, Mr. Mohammad informed the guards that he was done with the questioning, ending his participation entirely.¹⁶⁷

R. ~~(U)~~ Mr. Mohammad was questioned about the same information that he had been questioned about before while in the CIA RDI program,¹⁶⁸ and Mr. Mohammad, frustrated and tired by the overlapping questioning, asked that he not be required to answer and that agents should go back and read what he had previously stated under CIA RDI program interrogation.¹⁶⁹

S. ~~(U)~~ In response to Mr. Mohammad's objection to having to answer questions that he had previously answered while in the CIA RDI program, interviewing agents told him "that what he had said before did not matter to [them], that [they] were starting from a blank slate."¹⁷⁰ Agents did not advise Mr. Mohammad that his prior statements in the CIA RDI program could not be used against him.

4. ~~(U)~~ Law.

a. ~~(U)~~ The burden of proof on a motion to suppress a statement by an Accused is a threshold question. The general rule for interlocutory questions is set forth in the Rules for Military Commissions (R.M.C.), which places the burden of persuasion on the moving party unless another rule in the Manual for Military Commissions states otherwise.¹⁷¹ The rule concerning the

101, ¶¶ 691 and 714, respectively (Mr. Mohammad was permitted by RDI program personnel to advocate for himself concerning his conditions of confinement, including whether to take vitamins, access to a prayer rug and religious headgear, the specific bread or cheese he was served, and having the ability to control his cell temperature).

¹⁶⁶ ~~(U)~~ See Tr. dated 25 September 2023 at 36783; Tr. dated 28 September 2023 at 37300-01.

¹⁶⁷ ~~(U)~~ See *id.*

¹⁶⁸ ~~(U)~~ See Tr. dated 26 September 2023 at 36940-41.

¹⁶⁹ ~~(U)~~ See Tr. dated 25 September 2023 at 36797-98; Tr. dated 26 September 2023 at 36940-41, 36948.

¹⁷⁰ ~~(U)~~ See Tr. dated 26 September 2023 at 36940-41.

¹⁷¹ ~~(U)~~ See R.M.C. 801(e)(2).

~~CUI~~

~~CUI~~

admissibility of an accused's statement is such an exception. The M.C.R.E. explicitly shift the burden to the non-moving party, providing that "[w]hen an appropriate motion or objection has been made by the defense under this rule, the prosecution has the burden of establishing the admissibility of the evidence."¹⁷² The standard of proof is a preponderance of the evidence.¹⁷³

b. ~~(U)~~ The admissibility of an accused's statements is governed by a framework established in the Military Commissions Act of 2009 (M.C.A.) and its implementing regulations. This framework contains an absolute bar against the use of statements obtained through torture or other mistreatment. Specifically, the M.C.A. provides that "[n]o statement obtained by the use of torture or by cruel, inhuman, or degrading treatment [. . .] shall be admissible in a military commission [. . .] except against a person accused of torture or such treatment as evidence that the statement was made."¹⁷⁴ This prohibition is mirrored in M.C.R.E. 304(a)(1).

c. ~~(U)~~ For this evidentiary rule, torture is defined as "an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within the actor's custody or physical control."¹⁷⁵ The term "severe mental pain or suffering" is further defined by reference to federal law, meaning "the prolonged mental harm caused by or resulting from" one of eight predicate acts: (1) intentionally inflicting severe physical pain or suffering; (2) threatening to inflict severe physical pain or suffering; (3) administering or applying mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (4) threatening to administer or apply mind-

¹⁷² ~~(U)~~ M.C.R.E. 304(d).

¹⁷³ ~~(U)~~ See M.C.R.E. 304(d)(1).

¹⁷⁴ ~~(U)~~ 10 U.S.C. § 948r(a).

¹⁷⁵ ~~(U)~~ M.C.R.E. 304(b)(3).

~~CUI~~

~~CUI~~

altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (5) threatening imminent death; (6) threatening that another person will imminently be subjected to death; (7) threatening that another person will imminently be subjected to severe physical pain or suffering; or (8) threatening that another person will imminently be subjected to administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.¹⁷⁶

d. ~~(U)~~ For any statement not obtained by torture or cruel, inhuman, or degrading treatment, the M.C.A. and M.C.R.E. 304 establish a separate test for admissibility based on voluntariness. A statement of an accused may be admitted only if the military judge finds, by a preponderance of the evidence, that “(A) the totality of the circumstances renders the statement reliable and possessing sufficient probative value; and (B) that [. . .] the statement was voluntarily given.”¹⁷⁷

e. ~~(U)~~ Consistent with the precedent of our Superior Court, the Commission “assume[s] without deciding that the Due Process Clause applies” to these proceedings.¹⁷⁸ Therefore, while this Commission is governed by the procedural and evidentiary rules prescribed by the M.C.A, its application of those rules must comport with the fundamental fairness guaranteed by the Due Process Clause. The Supreme Court precedents defining the constitutional standard for voluntariness are therefore not merely persuasive; they establish the floor below which this Commission shall not fall.

¹⁷⁶ ~~(U)~~ See 18 U.S.C. § 2340(2).

¹⁷⁷ ~~(U)~~ 10 U.S.C. § 948r(c); M.C.R.E. 304(a)(2).

¹⁷⁸ ~~(U)~~ *Al-Hela v. Biden*, 66 F.4th 217, 232 (D.C. Cir. 2023).

~~CUI~~

~~CUI~~

f. ~~(U)~~ The ultimate issue of voluntariness is a question that requires a careful evaluation of all the circumstances of the interrogation.¹⁷⁹ As the Supreme Court held in 1961, in *Culombe v. Connecticut*,¹⁸⁰

The ultimate test remains that which has been the only clearly established test in Anglo-American courts for two hundred years: the test of voluntariness. Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process. The line of distinction is that at which governing self-direction is lost and compulsion, of whatever nature or however infused, propels or helps to propel the confession.

g. ~~(U)~~ In determining whether a defendant's will was overborne, courts must assess the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation. Factors to be considered include the accused's age, education, and intelligence; the lack of any advice of his constitutional rights; the length of detention; the repeated and prolonged nature of the questioning; and the use of physical punishment such as the deprivation of food or sleep.¹⁸¹ Furthermore, unconstitutional coercion can be the product of both discrete physical abuses and the general conditions of confinement.¹⁸²

h. ~~(U)~~ This "totality of the circumstances" test is codified in M.C.R.E. 304(a)(4). This rule directs that in determining whether a statement was voluntarily given, the military judge "shall consider the totality of the circumstances," including, as appropriate:

¹⁷⁹ ~~(U)~~ See *Mincey v. Arizona*, 437 U.S. 385, 395-401 (1978).

¹⁸⁰ ~~(U)~~ *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961); citing *Rogers v. Richmond*, 365 U.S. 534 (1961); reaffirmed in *Schneekloth v. Bustamonte*, 412 U.S. 218, 225-26 (1973).

¹⁸¹ ~~(U)~~ See *Schneekloth*, 412 U.S. at 226.

¹⁸² ~~(U)~~ See *United States v. Karake*, 443 F. Supp. 2d 8, 89 (D.D.C. 2006).

~~CUI~~

~~CUI~~

(1) ~~(U)~~ “[T]he details of the taking of the statement, accounting for the circumstances of the conduct of military and intelligence operations during hostilities;”

(2) ~~(U)~~ “[T]he characteristics of the accused, such as military training, age, and education level; and”

(3) ~~(U)~~ “[T]he lapse of time, change of place, or change in identity of the questioners between the statement sought to be admitted and any prior questioning of the accused.”

i. ~~(U)~~ When an accused has been subjected to prior coercive interrogations, the admissibility of a subsequent confession depends on whether the taint of the earlier coercion has dissipated. The Supreme Court has recognized that the “effect of earlier abuse may be so clear as to forbid any other inference than that it dominated the mind of the accused to such an extent that the later confession is involuntary.”¹⁸³ While the Court has rejected a rule that a prior coerced confession “perpetually disables the confessor from making a usable one after those conditions have been removed,” the prosecution bears the burden of showing that the coercive circumstances were, in fact, removed.¹⁸⁴ Additionally, there is non-controlling but persuasive authority in military jurisprudence that “when a confession is obtained at a lawful interrogation following an earlier interrogation involving actual coercion, the subsequent confession is presumptively tainted.”¹⁸⁵

j. ~~(U)~~ A determination of voluntariness does not turn “on the presence or absence of a single controlling criterion” and, instead, the determination turns on “a careful scrutiny of all the

¹⁸³ ~~(U)~~ *Lyons v. Oklahoma*, 322 U.S. 596, 603 (1944).

¹⁸⁴ ~~(U)~~ *United States v. Bayer*, 331 U.S. 532, 540-41 (1947).

¹⁸⁵ ~~(U)~~ *United States v. Cuento*, 60 M.J. 106, 114 (C.A.A.F. 2004), *see also Lyons v. State of Oklahoma*, 322 U.S. 596, 604 (1944) (in dicta, the Supreme Court posited that such a presumption, if it were to be applied, could be overcome by “evidence for the state which, if believed, would make it abundantly clear that the [earlier abuses] did not bring about the [subsequent] confession[.]” The Court declined to analyze whether a quantum of evidence lower than “abundantly clear” might suffice to overcome such a presumption against the prosecution.)

~~CUI~~

~~CUI~~

surrounding circumstances.”¹⁸⁶ “[C]ourts consider the totality of all the surrounding circumstances, regarding both the characteristics of the accused and the details of the interrogation.”¹⁸⁷ “[L]ess traditional forms of coercion, including psychological torture, as well as the conditions of confinement have been considered by courts in their assessment of the voluntariness of the statements.”¹⁸⁸

k. ~~(S)~~ In the context of unprivileged alien enemy belligerents, the M.C.A. does not strictly require *Miranda* warnings. However, the nature of the rights advisement provided—including whether agents provided a “cleansing statement” advising the accused that his prior coerced statements could not be used against him—remains a highly relevant factor in determining whether the taint of prior coercion has dissipated.¹⁸⁹ This principle aligns with Supreme Court precedent evaluating the curative effect of subsequent warnings. While a properly warned confession following an uncoerced, unwarned statement is generally admissible,¹⁹⁰ the Court has rejected the use of a two-step, “question-first, warn-later” strategy, noting that the very object of such a tactic is “to render *Miranda* warnings ineffective by waiting for a particularly opportune time to give them, after the suspect has already confessed.”¹⁹¹ Consequently, a “midstream recitation of warnings after interrogation and unwarned confession could not effectively comply

¹⁸⁶ ~~(S)~~ *United States v. Al-Nashiri*, 764 F.Supp.3d 1127, 1143 (U.S.C.M.C.R. 2025), quoting *Mohammed v. Obama*, 704 F. Supp. 2d 1, 26 (D.D.C. 2009) and *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973).

¹⁸⁷ ~~(S)~~ See *Al-Nashiri*, 764 F.Supp.3d at 1145, citing *Schneckloth*, 412 U.S. at 226-27.

¹⁸⁸ ~~(S)~~ *United States v. Karake*, F.Supp.2d, 8, 51 (referencing *Brooks v. Florida*, 389 U.S. 413, 413-15 (1967)).

¹⁸⁹ ~~(S)~~ See *United States v. Al-Nashiri*, 764 F. Supp. 3d 1127, 1155, 1167-68 (U.S.C.M.C.R. 2025).

¹⁹⁰ ~~(S)~~ See *Oregon v. Elstad*, 470 U.S. 298, 309 (1985).

¹⁹¹ ~~(S)~~ *Missouri v. Seibert*, 542 U.S. 600, 611 (2004) (plurality opinion).

~~CUI~~

~~CUI~~

with *Miranda's* constitutional requirement" without a sufficient break in time or circumstances to ensure the suspect understood he had a genuine choice to remain silent.¹⁹²

1. ~~(U)~~ Military judges may, if voluntariness is supported by a totality of the circumstances, admit "confessions made after prolonged detention," particularly if "questioning of the defendant was sporadic, not systematic, or had been discontinued during a considerable period prior to confession[.]"¹⁹³ However, even interrogation sessions "of relatively short duration" might not, depending on the totality of the circumstances, serve to "mitigate the substantial coercive effect created by repeated interrogation[.]"¹⁹⁴ It is relevant for a military judge to consider whether, at the time of the contested confession, the accused was faced with the threat of incommunicado detention.¹⁹⁵ It is relevant for a military judge to consider whether, considering a totality of the circumstances, improvements in an accused's conditions of confinement are meaningful enough to dispel the effects of prior coercion.¹⁹⁶

¹⁹² ~~(U)~~ *Id.* at 604; *see also id.* at 622 (Kennedy, J., concurring in the judgment).

¹⁹³ ~~(U)~~ *Culombe*, 367 U.S. at 626-627.

¹⁹⁴ ~~(U)~~ *Davis v. North Carolina*, 384 U.S. 737, 752 (1966).

¹⁹⁵ ~~(U)~~ *Haynes v. Washington*, 373 U.S. 503, 514 (1963)

"Here [. . .] the petitioner was alone in the hands of the police, with no one to advise or aid him, and he had 'no reason not to believe that the police had ample power to carry out their threats' to continue, for a much longer period if need be, the incommunicado detention—as in fact was actually done. Neither the petitioner's prior contacts with the authorities nor the fact that he previously had made incriminating oral admissions negatives the existence and effectiveness of the coercive tactics used in securing the written confession introduced at trial. The petitioner at first resisted making a written statement and gave in only after consistent denials of his requests to call his wife, and the conditioning of such outside contact upon his accession to police demands. Confronted with the express threat of continued incommunicado detention and induced by the promise of communication with and access to family Haynes understandably chose to make and sign the damning written statement; given the unfair and inherently coercive context in which made, that choice cannot be said to be the voluntary product of a free and unconstrained will[.]"

¹⁹⁶ ~~(U)~~ *See Al-Nashiri*, 764 F.Supp.3d at 1152-54, quoting favorably the following determination by the military judge:

~~CUI~~

~~CUI~~5. ~~(U)~~ Analysis.

a. ~~(U)~~ As a threshold matter, Mr. Mohammad's motion explicitly challenges the admissibility of his FBI LHM statements solely on the grounds that they were not voluntarily given.

Accordingly, the Commission limits its analysis to the voluntariness standard under M.C.R.E.

304(a)(4) and 10 U.S.C. § 948r(c). The Commission need not, and does not, reach the question of admissibility on other non-voluntariness grounds—such as, but not limited to, reliability.

[A]lthough the EITs [Enhanced Interrogation Techniques] may have ceased in 2003, the Accused was subjected to constant reminders [. . .] that a failure to cooperate with debriefers upon demand could lead to a return to the 'hard times.' *Unsurprisingly, the Accused continued to make statements while in CIA custody from late 2002 until September 2006.* These statements, made during the course of scores of interrogations and debriefings over four years, were not merely unwarned, but instead were actually coerced, with the constant looming threat of 'hard times' to come if the Accused failed to live up to his end of the 'contract.' [. . .]

Any resistance the Accused might have been inclined to put up when asked to incriminate himself was intentionally and literally beaten out of him years before. For years, the Accused was coerced and psychologically conditioned to cooperate with questioners—dozens, if not hundreds of times. To refuse to cooperate was to face the prospect once again of experiencing [. . .] physical and mental abuse. Through all of that, the Accused implicated himself again and again. *The Commission finds that the limited changes in the Accused's circumstances from September 2006 until February 2007 were not meaningful enough to erase the effects of what came before.* The change of interlocutors also means little under these circumstances as the Accused was met by numerous different debriefers over the years. From his perspective, the FBI LHM interviewers were merely the newest facts. *Further, the Government has done little to establish that the Accused's circumstances materially changed from 2003 until his arrival at NSGB in September 2006.*

and concluding:

Even if confinement officials had offered appellee more amenities, overall, after his transfer to Guantanamo Bay than what was previously available to him, or if he had experienced no consequences for disciplinary infractions at Guantanamo Bay, this fact would not contradict the military judge's conclusion—that there was no 'meaningful relief' from the coercive contract and 'the general conditions of confinement' it imposed on appellee before and throughout his FBI LHM interviews.

We thus find that the military judge did not err when he determined [that] the government failed to demonstrate that improved confinement conditions at Guantanamo Bay resulted in a material change in the coercive conditions that existed with appellee gave his FBI LHM statements.

(Emphasis in original opinion).

~~CUI~~

~~CUI~~

Furthermore, the Commission does not reach the separate legal questions of whether the statements are inadmissible as having been obtained by torture or cruel, inhuman, and degrading treatment under M.C.R.E. 304(a)(1), or whether they are inadmissible as derivative of such statements under M.C.R.E. 304(a)(5).

b. ~~(U)~~ The Prosecution bears the burden of establishing, by a preponderance of the evidence, that Mr. Mohammad's January 2007 FBI LHM statements were voluntarily given.¹⁹⁷ To meet this burden, the Prosecution must demonstrate that Mr. Mohammad's will was not overborne and that the statements were the product of an essentially free and unconstrained choice.¹⁹⁸ Because Mr. Mohammad was previously subjected to severe physical and psychological coercion in the CIA RDI program, the Prosecution must also prove that the taint of that earlier coercion had sufficiently dissipated by the time of the FBI questioning, such that his FBI LHM statements were not derivative of his prior involuntary statements.¹⁹⁹

c. ~~(U)~~ **The Coercive Baseline of the CIA RDI Program.** The factual record establishes that Mr. Mohammad was subjected to extraordinary physical and mental abuse during his time in CIA custody from March 2003 until his transfer to Guantanamo Bay in September 2006. This treatment included at least 183 instances of waterboarding, prolonged standing sleep deprivation, nudity, rectal rehydration, and explicit threats to murder his child. The Commission finds that the explicit intent of this program was to break Mr. Mohammad's resistance and condition him to

¹⁹⁷ ~~(U)~~ M.C.R.E. 304(d)(1); 10 U.S.C. § 948r(c).

¹⁹⁸ ~~(U)~~ *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961).

¹⁹⁹ ~~(U)~~ See *Lyons v. Oklahoma*, 322 U.S. 596, 603 (1944) ("the effect of the earlier abuse may be so clear as to forbid any other inference than that it dominated the mind of the accused to such an extent that the later confession is involuntary"); *United States v. Bayer*, 331 U.S. 532, 540-41 (1947). From Mr. Mohammad's capture through the January 2007 interviews, Mr. Mohammad remained completely dependent upon the United States Government for every aspect of his daily existence. He was never released from confinement, never returned to an environment in which he exercised ordinary autonomy, never consulted with counsel, and never experienced any meaningful break from governmental control before speaking with FBI investigators.

~~CUI~~

~~CUI~~

answer questions. Furthermore, the CIA utilized operant conditioning to instill an enduring fear of the broader U.S. Government ("Washington"), conditioning him to believe that a failure to cooperate fully and spontaneously would result in a return to severe physical mistreatment and a loss of basic amenities.

d. ~~(U)~~ **First Basis for Suppression: Attenuation and the "Clean Team" Interrogation.** In evaluating whether the taint of the CIA's coercion had dissipated by January 2007, the Commission must analyze the totality of the circumstances, including the lapse of time, changes in location, the identity of the questioners, and the nature of the rights advisements.²⁰⁰

(1) ~~(U)~~ *Continuity of Confinement Conditions and Operant Conditioning:* The Prosecution relies on the fact that upon his arrival at NSGB, the Camp VII Commander informed Mr. Mohammad that he was in DoD custody and that camp operations were consistent with Geneva Convention Common Article 3. However, the Commission finds this verbal assurance was insufficient to sever the psychological tether of his prior abuse. Despite this formal change in custody four months prior to the FBI LHM questioning, the actual conditions of his confinement at Camp VII were markedly similar to those at previous RDI locations.

(2) ~~(CUI)~~ Mr. Mohammad's cell was configured [REDACTED]

[REDACTED] and he was subjected to [REDACTED] lighting.

(3) ~~(U)~~ Camp VII mental health personnel specifically raised concerns regarding the risk of mental degradation caused by the detainees' "isolation and lack of stimulation." While Mr. Mohammad was no longer held entirely incommunicado from the outside world—having

²⁰⁰ ~~(U)~~ See M.C.R.E. 304(a)(4). In determining voluntariness, the Commission considered and weighed each factor listed in M.C.R.E. 304(a)(4). This Ruling discusses those factors that the Commission found to be most pertinent under the required totality of the circumstances analysis.

~~CUI~~

~~CUI~~

been permitted a visit by the ICRC prior to the FBI LHM questioning—sensory deprivation measures and shackles were still utilized during his transport to other locations, and the Echo II interrogation facility itself was a former CIA detention site. Furthermore, any minor accommodation or "amenities" afforded to Mr. Mohammad during this period—such as the ability to negotiate the length of his sessions—did not represent a genuine break from his past treatment. Rather, these allowances were entirely consistent with the operant conditioning strategy employed by the CIA, which explicitly utilized the granting of amenities to ensure continued compliance and reinforce his conditioned state. The Commission finds that this environmental continuity effectively maintained the coercive psychological pressure established by the CIA.

(4) ~~(U)~~ *Identity of the Questioners and Overlap of Investigations:* The FBI agents who conducted the FBI LHM questioning, SA Pellegrino and IA Antol, were heavily integrated into the post-9/11 PENTTBOM intelligence-gathering apparatus. They had previously fed intelligence requirements directly to the CIA for use in Mr. Mohammad's coercive interrogations. Consequently, the transition from intelligence to law enforcement was fundamentally blurred.

(5) ~~(U)~~ *Circumstances of the Questioning:* The physical execution of the FBI LHM questioning reinforced Mr. Mohammad's conditioned compliance. He was unexpectedly shackled, transported by a specialized guard force, and shackled in an interrogation room at Echo II. During introductions, Mr. Mohammad explicitly stated his belief that he was still "a slave."

(6) ~~(U)~~ *Absence of Curative Warnings:* Crucially, the FBI agents deliberately chose not to administer *Miranda* warnings or any equivalent rights advisement. Furthermore, they failed to provide a cleansing warning informing Mr. Mohammad that the statements he had previously

~~CUI~~

~~CUI~~

made under coercion to the CIA could not be used against him. *See Missouri v. Seibert*, 542 U.S. 600 (2004). When Mr. Mohammad expressed frustration at being asked the exact same questions he had already answered in CIA custody, the agents merely told him they were starting from a "blank slate." To a person who has experienced years of operant conditioning, a simple assertion of a "blank slate" by agents of the same government is wholly insufficient to sever the psychological tether of prior coercion.

e. ~~(U)~~ Second Basis for Suppression: The Immediate Circumstances of the FBI LHM Interrogation.

(1) ~~(U)~~ Even if the Commission were to assume, *arguendo*, that the taint of the CIA RDI program's psychological conditioning and severe coercion had entirely dissipated by January 2007, the Prosecution still bears the burden of establishing that the discrete circumstances of the FBI LHM questioning were not inherently coercive in their own right. Evaluating the totality of the circumstances surrounding the Echo II interrogations under M.C.R.E. 304(a)(4) and *Schneekloth v. Bustamonte*, the Commission finds the Prosecution has failed to establish voluntariness by a preponderance of the evidence.

(2) ~~(U)~~ *Deceptive Movement and Physical Restraint*: The factual record demonstrates that the environment deliberately constructed by the HVD PTF agents and military personnel was inherently intimidating. Mr. Mohammad was held in incommunicado detention at a remote military installation. For questioning, he was subjected to deceptive movement procedures, transported by a specialized military guard force, placed in a room containing a metal cage, and shackled. During the interrogation, an agent was deliberately seated behind the other interviewing agents, further contributing to an atmosphere of physical vulnerability and intimidation.

~~CUI~~

~~CUJ~~

(3) ~~(CUJ)~~ The deceptive nature of this environment is underscored by confinement facility logs, which reveal that, on the first day of his interrogations, Mr. Mohammad was removed from his housing unit without being told that he was to be questioned, and potentially under the false guise of an "off-site medical appointment."²⁰¹

(4) ~~(CUJ)~~ *Denial of Counsel, Warnings, and Cleansing Statements*: Most critically, the agents engaged in a deliberate deprivation of fundamental legal safeguards. HVD PTF agents were instructed not to administer *Miranda* warnings or any equivalent advisement of the right to remain silent. They also deliberately withheld any cleansing statement that would have informed Mr. Mohammad that his prior coerced statements to the CIA could not be used against him, thereby exploiting his prior admissions. Furthermore, when Mr. Mohammad proactively inquired about his right to an attorney—acting on advice from the ICRC—the agents explicitly denied him that right, leveraging the fact that military commission charges had not yet been formally sworn to keep him legally isolated.²⁰²

(5) ~~(CUJ)~~ *Insufficiency of Minor Accommodations*: The Prosecution argues that Mr. Mohammad demonstrated a capacity for self-determination because he successfully negotiated the duration of the sessions, cancelled the 15 January 2007 session due to illness, and ultimately ended his participation on 17 January 2007. While these facts suggest Mr. Mohammad retained some level of physical agency, these minor accommodations do not cure the fundamental coercion of the environment. A detainee who believes he is "a slave" (as

²⁰¹ ~~(CUJ)~~ See AE 630E (KSM) at 83.

²⁰² ~~(CUJ)~~ In *Oregon v. Elstad*, 470 U.S. 298 (1985), the U.S. Supreme Court considered whether a subsequent *Mirandized* confession was rendered inadmissible because the accused previously made an unwarned but voluntary statement. Critical to the Court's analysis was that the initial statement was voluntary – the defect arose solely from the failure to administer *Miranda* warnings prior to questioning. This is a stark contrast from the facts in this case.

~~CUJ~~

~~CUI~~

Mr. Mohammad stated on the first day), who is shackled, denied access to counsel upon request, and intentionally kept ignorant of both his right to remain silent and the inadmissibility of his prior coerced confessions, cannot be said to be making an "essentially free and unconstrained choice."²⁰³

f. ~~(U)~~ **Conclusion.** Whether viewed as the unbroken continuation of the CIA's psychological conditioning and severe coercion, or evaluated strictly on the inherently coercive conditions and deliberate denial of rights advisements during the January 2007 FBI LHM questioning itself, the Prosecution has failed to prove by a preponderance of the evidence that Mr. Mohammad's statements to the FBI were voluntarily given.

6. ~~(U)~~ **Ruling.** The motion is **GRANTED**. Mr. Mohammad's statements to federal agents at NSGB, Cuba, between 12 and 16 January 2007, as documented in FBI LHM, are suppressed.

So **ORDERED** this 28th day of August, 2026.

//s//

MICHAEL A. SCHRAMA, Lieutenant Colonel, USAF
Military Judge
Military Commissions Trial Judiciary

²⁰³ ~~(U)~~ *Culombe*, 367 U.S. at 602.

~~CUI~~