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1 **[The R.M.C. 803 session was called to order at 1336, 04 May 2026.]**

2 MJ [LtCol SCHRAMA]: It is called to order.

3 Good morning, Counsel. Good morning, parties. We will
4 begin with the accounting of the parties.

5 Mr. Trivett, could you please identify who is in attendance
6 on behalf of the United States both here in the courtroom and in the
7 Remote Hearing Room.

8 MTC [MR. TRIVETT]: Yes, sir. Good afternoon.

9 Representing the United States in the courtroom in
10 Guantanamo is myself, Mr. Clay Trivett; Colonel Joshua Bearden;
11 Ms. Nicole Tate; and Captain Allison Carr.

12 Also present in the courtroom in Guantanamo from the Federal
13 Bureau of Investigation is Supervisory Intelligence Analyst Kimberly
14 Waltz.

15 Representing the United States in the Remote Hearing
16 Facility in Virginia is Mr. Jeff Groharing.

17 Your Honor, these proceedings are being transmitted via
18 closed-circuit television to sites in the continental United States
19 pursuant to the commission's orders, specifically Fort Meade,
20 Pentagon, Fort Devens, and Joint Base McGuire-Dix-Earl -- I'm sorry,
21 McGuire-Dix-Lakehurst.

22 MJ [LtCol SCHRAMA]: Thank you, Mr. Trivett.

23 Good morning, Mr. -- I guess it would be good afternoon now,

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1 Mr. Sowards. Could you please indicate for the record who is in
2 attendance on behalf of Mr. Mohammad.

3 LDC [MR. SOWARDS]: Yes. Good day, Your Honor.

4 Gary Sowards on behalf of Mr. Mohammad, who is present,
5 joined by Melanie Partow; Major Michael Leahy, United States Air
6 Force; and Derek Poteet in the courtroom.

7 And in the Remote Hearing Room, Major Elspeth Theis, United
8 States Air Force; who is also joined by Captain Ayana Anderson, also
9 United States Air Force and, with the pleasure of the court, will be
10 making her appearance today.

11 MJ [LtCol SCHRAMA]: Thank you.

12 LDC [MR. SOWARDS]: You're welcome, sir.

13 MJ [LtCol SCHRAMA]: Good afternoon, Mr. Engle. Could you
14 please account for your team on behalf of Mr. Bin'Attash.

15 LDC [MR. ENGLE]: Yes. Good afternoon, Your Honor.

16 Matthew Engle on behalf of Mr. Bin'Attash. To my right we have Edwin
17 Perry, to my left William Montross and Lieutenant Austin Ridgeway in
18 the courtroom.

19 Other counsel present in the RHR, we have Tasnim Motala, and
20 I believe that's it.

21 MJ [LtCol SCHRAMA]: Thank you.

22 Good afternoon, Mr. Connell. Could you please account for
23 your team on behalf of Mr. Ali.

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1 LDC [MR. CONNELL]: Good afternoon, Your Honor. Here in the
2 courtroom are myself, James Connell, and Defne Ozgediz.

3 In the Remote Hearing Room are Alka Pradhan and Lieutenant
4 Matthew Burns.

5 MJ [LtCol SCHRAMA]: Thank you.

6 Mr. Ruiz, good afternoon. Could you please account for your
7 team on behalf of Mr. Hawsawi.

8 LDC [MR. RUIZ]: Good afternoon, Judge. Walter Ruiz, along
9 with Mr. Sean Gleason, and Major Nichole Timmreck is in the RHR.

10 MJ [LtCol SCHRAMA]: Thank you, sir.

11 For the benefit of all, I will note for the record that we
12 will occasionally hear the voices of our sworn court interpreters
13 over the speaker system. They are an integral part of these
14 proceedings, and I remind everyone to speak at a measured pace to
15 allow for accurate and simultaneous -- excuse me -- interpretation.

16 Now, Mr. Sowards, as you articulated, I do understand there
17 is a new counsel making an appearance today on behalf of
18 Mr. Mohammad. We're going to go ahead and take care of that now.

19 Can Captain Anderson please step forward and please state
20 for the record your qualifications and detailing information.

21 DC [Capt ANDERSON]: Good afternoon, Your Honor.

22 I am Captain Anderson, United States Air Force. I have been
23 detailed to the military commissions by Brigadier General Jonathan

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1 Vaughn, Chief Defense Counsel.

2 My detailing memorandum is on the record at AE 004GGGG (KSM)
3 filed on 30 April 2026. I'm qualified and certified under
4 Article 27(b) and sworn previously under Article 42(a) of the Uniform
5 Code of Military Justice.

6 I'm also qualified and certified under the Rules of Military
7 Commissions 502 and 504. I have read all of the relevant protective
8 orders and signed the relevant Memorandum of Understanding.

9 I have not acted in any way that might tend to disqualify
10 me.

11 MJ [LtCol SCHRAMA]: Thank you, Captain Anderson.

12 We're going to go ahead and swear you in. Do you prefer to
13 be -- do you prefer to swear or affirm?

14 DC [Capt ANDERSON]: Sir, I will swear.

15 MJ [LtCol SCHRAMA]: Okay. Please raise your right hand.

16 **[Counsel was sworn.]**

17 MJ [LtCol SCHRAMA]: Thank you.

18 DC [Capt ANDERSON]: Thank you, Your Honor.

19 MJ [LtCol SCHRAMA]: I will now advise the accused of their
20 right to be present and their right to waive said presence.

21 You each have the right to be present during all sessions of
22 the commission. If you request to absent yourself from any session,
23 such absence must be voluntary and of your own free will. Your

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1 voluntary absence from any session of the commissions is an
2 unequivocal waiver of the right to be present during that session.

3 Your absence from any session may negatively affect the
4 presentation of the defense in your case. Your failure to meet with
5 and cooperate with your defense counsel may also negatively affect
6 the presentation of your case. Under certain circumstances, your
7 attendance at a session can be compelled regardless of your desire
8 not to be present.

9 Regardless of your voluntary waiver to attend a particular
10 session of the commission, you have the right at any time to decide
11 to attend any subsequent session. If you decide not to attend the
12 morning session but wish to attend the afternoon session, you must
13 notify the guard force of your desires. Assuming there is enough
14 time to arrange transportation, you will then be allowed to attend
15 the afternoon session.

16 You will be informed of the time and date of each commission
17 session prior to the session to afford you the opportunity to decide
18 whether you wish to attend that session.

19 Mr. Mohammad, good afternoon. Do you understand what I have
20 just explained to you?

21 ACC [MR. MOHAMMAD]: Yes.

22 MJ [LtCol SCHRAMA]: Thank you.

23 And, Mr. Bin'Attash, good afternoon. Do you understand what

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1 I have explained to you?

2 ACC [MR. BIN'ATTASH]: Yes.

3 MJ [LtCol SCHRAMA]: Thank you.

4 Mr. Ali, good afternoon. Do you understand what I have just
5 explained to you?

6 ACC [MR. ALI]: **[Speaking in English]** Good afternoon. Yes.

7 MJ [LtCol SCHRAMA]: Thank you.

8 And, Mr. al Hawsawi, good afternoon. Do you understand what
9 I have just explained to you?

10 ACC [Mr. Al HAWSAWI]: Yes.

11 MJ [LtCol SCHRAMA]: Thank you.

12 I have several administrative matters to go over with you
13 quickly.

14 First, regarding the daily schedule, my hope is that, if
15 everything goes well, we will convene each morning at 0900. It is my
16 understanding that prayer times for periods that we are scheduled to
17 be in session are at approximately 1300 and 1615.

18 I also understand that the galleys here on Naval Station
19 Guantanamo Bay are open for meal times from 1100 to 1330 and 1700 to
20 1900.

21 Now, to accommodate prayer times and meals, we will take a
22 recess from approximately 1230 to 1400. We will plan to recess for
23 the day no later than 1530 **[sic]**.

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1 Mr. Sowards, would that schedule adequately accommodate
2 prayer and meal time?

3 LDC [MR. SOWARDS]: Yes, Your Honor.

4 MJ [LtCol SCHRAMA]: Thank you.

5 Second, I want to address facility operations and clear up
6 any confusion regarding timelines.

7 AE 965, the Trial Conduct Order governing counsel/client
8 meetings in Courtroom 2 and adjacent facilities, as well as use of
9 the Remote Hearing Room, remains in full effect.

10 For clarity, per paragraph 3.a of that order, its provisions
11 apply during the entirety of the time I am physically on board NSGB,
12 beginning with my arrival and ending with my departure. If
13 implementation challenges arise, the parties must confer and
14 cooperate in good faith to find a mutual solution. You may bring an
15 impasse to the commission only after exhausting those efforts to
16 resolve the matter mutually.

17 Regarding the RHR specifically, commission authorization to
18 appear remotely does not waive the access protocols in the second
19 supplement to AE 833A. These procedures apply to all personnel
20 utilizing the RHR, including counsel, paralegals, analysts, and
21 witnesses. Everyone must provide timely notice to the Court
22 Information Security Officer to gain access. Per docket order
23 AE 993, that CISO notification was due on April 27th.

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1 Third, regarding the order of proceedings, as the government
2 bears the burden on all motions scheduled for this session, the
3 prosecution will argue first on each. Based on the time estimates
4 provided last session, we will complete all unclassified oral
5 argument on AE 989, the scheduling order motion, hopefully today. If
6 not, we will continue with that tomorrow. The prosecution will argue
7 first, followed by responses from each of the defense teams.

8 The remainder of this week will be dedicated to the
9 prosecution arguments on the LHM suppression motions, beginning
10 tomorrow with AE 630. We will conclude this week on Friday with the
11 defense response on AE 630 during the day, followed by any necessary
12 505(h) hearing in the evening.

13 Now, I think based on correspondence that I saw this
14 afternoon, I believe the 505(h) issue, per filings, I think we have a
15 conclusion to. But if not, we'll take up any ambiguities in that at
16 the end of the week.

17 Next week will feature the remaining unclassified defense
18 responses and a consolidated session for the classified arguments, I
19 predict, hopefully around Wednesday of next week.

20 After that, we will conduct the defense theories on the case
21 on Thursday and Friday in closed session.

22 Does any counsel have any questions or concerns regarding
23 the proposed schedule ahead for this week and next?

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1 MTC [MR. TRIVETT]: Sir, I'm just a bit confused.
2 Understanding that we're starting the argument tomorrow on
3 Mr. Mohammad's AE 630 motion to suppress, is it your intention to
4 then stop after the government is done and then not go back into
5 court until Friday with the defense argument?

6 MJ [LtCol SCHRAMA]: No. My plan, starting tomorrow, is for
7 the government to conduct argument on each of their -- on each of the
8 LHM suppression motions. When we conclude with that, we will begin
9 with the defense presentations, which I think we'll probably get to
10 around Friday.

11 My other thought was I have written out in my itinerary the
12 505(h) hearing. But, as I said, I think -- I think that's been
13 resolved. So we won't have that classified hearing.

14 But we will conclude -- we will conduct the government
15 arguments. And then at conclusion, we'll begin the defense. So that
16 could be Thursday. I think it will be Friday. It could be Monday.
17 But they will fall after the conclusion of your presentation.

18 MTC [MR. TRIVETT]: Okay. One additional point of
19 clarification.

20 So I'm arguing on behalf of the government for
21 Mr. Mohammad's, and then Colonel Bearden is going to argue on behalf
22 of the government for Mr. Hawsawi's, and then I'm going to argue
23 again on behalf of the government for Mr. Bin'Attash.

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1 So are there going to be dates certain this week where
2 you're expecting us to start that? Or is it just we're going after
3 one's done? Like, once I'm done with Mr. Mohammad, Colonel Bearden's
4 expected to go right away, or is it going to be the next day? And
5 this is just for our planning purposes.

6 MJ [LtCol SCHRAMA]: Well, let me ask you this. How many
7 hours tomorrow do you think you will need for Mr. Mohammad's? I
8 believe, based on March when I asked this question, it seemed to be
9 around the five-hour mark, five to six.

10 So based on that calculation, my planning purpose has the
11 government taking a full day for each presentation. Now, if you tell
12 me today I only need two hours, then I'm probably going to say we'll
13 get to the next one tomorrow.

14 MTC [MR. TRIVETT]: I certainly believe it's going to be
15 longer than two hours.

16 MJ [LtCol SCHRAMA]: Okay.

17 MTC [MR. TRIVETT]: I don't know if it's quite going to be
18 five. But just for our planning purposes, if we could agree that
19 Mr. Mohammad will be tomorrow with the hope that Mr. Hawsawi will be
20 on Wednesday and Mr. Bin'Attash on Thursday, that would be helpful
21 for us and for our team to prioritize.

22 MJ [LtCol SCHRAMA]: And that's fine. And that's kind of the
23 roadmap I've set, at least in my planning purposes, based on our

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1 conversation in March.

2 But, like I said, if -- you know, I would like to utilize a
3 full day. So if you believe one of your presentations is going to
4 fall short of that time period, then let me know.

5 MTC [MR. TRIVETT]: Yes, sir. I appreciate the clarification.

6 MJ [LtCol SCHRAMA]: Okay. And then, Mr. Sowards, based on
7 that roadmap, if everything goes accordingly, we would begin with
8 your argument on Friday.

9 LDC [MR. SOWARDS]: And may I ask also, Your Honor, would that
10 be scheduled around the ex partes if those go forward on either
11 Thursday or Friday or -- and maybe I misunderstood. I thought you
12 were thinking of taking up the folks who wanted ex partes on
13 the -- at the end of the week.

14 MJ [LtCol SCHRAMA]: End of next week.

15 LDC [MR. SOWARDS]: Oh, next week.

16 MJ [LtCol SCHRAMA]: Yep.

17 LDC [MR. SOWARDS]: Okay. Thank you.

18 MJ [LtCol SCHRAMA]: Okay. Yep. I want to make sure the
19 first thing, my priority ----

20 LDC [MR. SOWARDS]: Perfect.

21 MJ [LtCol SCHRAMA]: ---- is to conduct argument in the 989
22 and the LHM motions. And then provided we have time, which I think
23 we will, we'll take up the ex parte briefings.

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1 LDC [MR. SOWARDS]: Great. Took me a minute, but I got it.

2 Thank you so much.

3 MJ [LtCol SCHRAMA]: Mr. Ruiz, yes?

4 LDC [MR. RUIZ]: Yes, Judge. With that in mind, could we then
5 agree that Mr. Hawsawi's would go on Monday, presuming that
6 Mr. Sowards finishes his presentation on Friday? That would also
7 help us for our planning purposes if we could agree that Monday would
8 be the day that we would be prepared to respond.

9 MJ [LtCol SCHRAMA]: Yes.

10 LDC [MR. RUIZ]: Thank you.

11 MJ [LtCol SCHRAMA]: Mr. Connell?

12 LDC [MR. CONNELL]: Sir, all other things being equal, it's
13 our preference to do our ex parte this week because the -- one of our
14 members is not available next week. I understand the schedule you've
15 laid out. I understand its constraints.

16 If it happens that, say, an afternoon opens up because one
17 of the government arguments is -- doesn't take as long or something
18 like that, we'll approach the military commission about maybe we
19 could use that time profitably by our ex parte.

20 MJ [LtCol SCHRAMA]: And that's a great idea, Mr. Connell.

21 Yeah, if time allows, we can definitely take it up out of
22 place. Just for planning purposes, I want to put it at the end
23 because it's important that we get to, but there's other things I

1 want to accomplish on this trip also.

2 Mr. Engle?

3 LDC [MR. ENGLE]: Yes. Thank you, Your Honor.

4 I think two things. One is I'm kind of in the same boat as
5 Mr. Ruiz. So if it helps open up some time for Mr. Connell's
6 ex parte, it would help me to have the weekend to prepare oral
7 argument and deliver that on Monday or Tuesday next week and still
8 leave plenty of time for the ex partes at the end of the week.

9 MJ [LtCol SCHRAMA]: Yeah, I think with your -- our schedule,
10 you would be placed on Tuesday.

11 LDC [MR. ENGLE]: Fantastic.

12 The other point, I have e-mailed the court to give you a
13 heads-up after we were delayed this morning. And I don't know if you
14 would like me to raise that now or ----

15 MJ [LtCol SCHRAMA]: Yeah, please.

16 LDC [MR. ENGLE]: So I think I laid it out in the e-mail, but
17 we've been working very hard to get our reply on 631L (Sup) finished.
18 We have people in the trailer working on it right now.

19 As Your Honor knows, it was a lengthy brief that the
20 government filed and we had a week to reply and one of those days was
21 travel to Guantanamo on Saturday. So we're just -- we're getting
22 close but we're not quite there.

23 So we were asking for an extension to file that. It was

1 going to be due at 1600 today. I had asked for Wednesday in my
2 e-mail. I am -- I know that I said that Mr. Trivett had agreed or
3 not to oppose that.

4 I also want to be fair to the government. And if -- it
5 sounds like they will be arguing our voluntariness case on Thursday,
6 I wouldn't want to get that to them, you know, late on Wednesday. So
7 what I would, I guess, modify my request and say we'll stay up as
8 late as we have to tomorrow and get it in before we go to bed Tuesday
9 night if the commission is amenable to that.

10 MJ [LtCol SCHRAMA]: Okay.

11 Mr. Trivett, any concerns with that?

12 MTC [MR. TRIVETT]: No concerns, sir.

13 MJ [LtCol SCHRAMA]: Okay. Yeah, permission is granted to
14 file that beyond today's due date.

15 LDC [MR. ENGLE]: Thank you, Your Honor.

16 MJ [LtCol SCHRAMA]: Anything else, Mr. Engle?

17 LDC [MR. ENGLE]: Not right now. Thank you.

18 MJ [LtCol SCHRAMA]: Okay. Seeing no other matters that we
19 need to take up before proceeding with oral argument on AE 989 ----

20 LDC [MR. RUIZ]: Actually, Judge ----

21 MJ [LtCol SCHRAMA]: Yes.

22 LDC [MR. RUIZ]: Sorry. I was waiting for you to review your
23 notes.

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1 MJ [LtCol SCHRAMA]: Yeah.

2 LDC [MR. RUIZ]: There are a few matters that I would
3 appreciate the opportunity to address on the record prior to
4 beginning on the argument.

5 MJ [LtCol SCHRAMA]: Certainly. Please proceed, Mr. Ruiz.

6 LDC [MR. RUIZ]: Thank you, Judge.

7 As the commission is aware, at the last session of the
8 commissions I was unable to attend due to illness. This is the first
9 opportunity I will have to address the court on a number of decisions
10 that were made in my absence.

11 I think it is essential for the preservation of the record
12 and the appellate record for Mr. al Hawsawi in order to preserve his
13 right to due process and meaningful appeal should there be an appeal
14 in the future.

15 So that is my intention here. Relatively short comments and
16 one exhibit that I would like to submit to the court for admission.

17 First of all, Judge, during my extended absence last time,
18 there were a number of times at the beginning of sessions where the
19 commission addressed the matter of the absence of Mr. al Hawsawi's
20 counsel. It is my position and our position that Mr. al Hawsawi was
21 unrepresented, meaningfully represented, and efficiently represented
22 during the last session of the commissions.

23 As the court was aware, and I think ultimately articulated

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1 on the record, I was unavailable due to illness and at the direction
2 of medical staff here at Guantanamo Bay. That illness took the
3 entire week. So I was unable to attend and to perform my functions
4 as a learned counsel on behalf of Mr. al Hawsawi.

5 During that same time, the remainder of Mr. al Hawsawi's
6 team, Ms. Suzanne Lachelier, Mr. Sean Gleason, and Major Nichole
7 Timmreck did not attend the session of the commissions. The
8 commission articulated on the record that they were voluntarily
9 absent.

10 What I want the record to clearly reflect is the reason for
11 their absence. And it's simply this: They were given an instruction
12 by myself as the learned counsel, the lead counsel on this team, not
13 to attend commission proceedings based on the order of events that
14 the commission intended to proceed with in the absence of learned
15 counsel.

16 Of course, there was the testimony of a witness that was
17 relevant to the letterhead memorandum admissibility, in particular
18 the agent who was involved in Mr. Bin'Attash's examination.

19 It is our position and always has been our position that
20 these agents are inextricably intertwined amongst the cases. And as
21 the record throughout the years amply reflects, and as you will see
22 during our response next Monday, there are many questions that we
23 asked of agents who were directly involved with other individuals who

1 led to direct issues that will be argued on Monday in terms of
2 impacting Mr. al Hawsawi's admissibility of his statements.

3 For that reason, we articulated, or the teams articulated
4 that this was a critical junction and a critical stage of the
5 proceedings at which learned counsel needed to be present in order to
6 both protect Mr. al Hawsawi's rights and lead the efforts of the team
7 as well.

8 So what I wanted to make clear was that their absence was,
9 in fact, due to the instruction that I provided to them. They
10 followed that instruction. There was no -- there was no
11 determination by them. There was no deliberation, no choice, no
12 discussion on that matter. It was simply an instruction and they
13 followed that.

14 During one of the sessions of the commission, I had
15 previously informed the commission via e-mail that Mr. al Hawsawi
16 would have people present at the table, as he was in the courtroom,
17 but they would not be here in a representative capacity as they were
18 not detailed counsel. They were not counsel of record. And they
19 would be here simply so that Mr. al Hawsawi would not be at counsel
20 table on his own.

21 A review of the record indicates that the commission
22 nevertheless inquired of one of those representatives, Mr. Michael
23 Farag, who is an analyst on our team. Again, he's not a legal

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1 representative of Mr. al Hawsawi. And the commission sought to
2 ratify counsel's absence as voluntary, something that Mr. Farag
3 responded to in the moment, not expecting to be questioned by the
4 commission, and said that that was correct.

5 In fact, that was incorrect. Mr. al Farag -- Mr. Farag had
6 absolutely no knowledge of the reasoning behind counsel's absence and
7 he was in no position to address the commission on that matter. So I
8 wanted that to be crystal clear for the appellate reviewing
9 authorities.

10 It is also our position, as I said, that Mr. al Hawsawi was
11 essentially unrepresented during the last session of the commissions;
12 that simply reviewing of the transcripts would not put him in the
13 same position as if counsel had been here and present in order to
14 vindicate and articulate his rights.

15 Along those lines, I have had a document marked as Appellate
16 Exhibit AE 995 (MAH) that I would like to tender for admissibility to
17 the court. A copy has been provided to Mr. Trivett and the
18 prosecution for review and they indicate that there is no objection.

19 MJ [LtCol SCHRAMA]: Mr. Ruiz, could you repeat 995? And then
20 the ----

21 LDC [MR. RUIZ]: Yes. AE 995 (MAH).

22 MJ [LtCol SCHRAMA]: Thank you.

23 LDC [MR. RUIZ]: And I would ask the permission to tender this

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1 exhibit into the record at this time.

2 MJ [LtCol SCHRAMA]: You may.

3 LDC [MR. RUIZ]: May I approach?

4 MJ [LtCol SCHRAMA]: You may.

5 LDC [MR. RUIZ]: Yes, sir. That exhibit -- and I know you'll
6 have an opportunity to review it -- essentially lists our review of
7 the record and a number of different categories of instances where
8 the transcript did not capture what was discussed in the courtroom.
9 Categories include conferences among counsel off the record, times
10 where the microphone was not pushed during the conversations there in
11 court, such that in-court participants would have been able to hear
12 what the military judge was saying, but the record did not capture
13 it. So those instances are unavailable.

14 There were also, obviously, I think, the normal obstacles
15 that happen when a witness testifies which is the inability to assess
16 the witness, to view their mannerisms, their speech, their cadence.
17 And whether there is an opportunity to cross-examine this witness at
18 a later time or not, we are now in a discernible disadvantage, one
19 that cannot be recovered because the prosecution has had the
20 opportunity to question this witness in court with the witness
21 present and with the ability not only to assess the witness but also
22 to confer with the witness in a number of times.

23 Those are the matters that I wanted to attain to the record

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1 and preserve for the record. If you have any questions, I'm happy to
2 answer those at this time.

3 MJ [LtCol SCHRAMA]: Mr. Ruiz, no questions. I appreciate you
4 putting that on the record.

5 LDC [MR. RUIZ]: Thank you, sir.

6 MJ [LtCol SCHRAMA]: Thank you.

7 **[Pause.]**

8 MJ [LtCol SCHRAMA]: Mr. Connell?

9 LDC [MR. CONNELL]: Sir, in December and March, we objected to
10 the absence of nongovernmental organizations in the AE 978 series.
11 The military commission issued a ruling in AE 978D based on the
12 government proffering a new policy.

13 I will ask the military commission to look over my left
14 shoulder and note that there are no NGOs present in the -- on island
15 this week.

16 When I reached out to them to ask why there were no NGOs,
17 they responded -- told me that they were given too short a turnaround
18 to comply with the new requirements which are imposed by the new
19 policy.

20 I do note that it's my understanding that there are NGOs
21 scheduled for next week. I understand the court's ruling in 978D and
22 I'm not here to argue it. But I do want to note that I'm not sure
23 that in the long term this issue will be moot. And if issues arise

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1 next week, I will return -- I do object to going forward without
2 NGOs, but I will continue to raise the issue as the circumstances
3 warrant.

4 MJ [LtCol SCHRAMA]: Please do, Mr. Connell.

5 LDC [MR. CONNELL]: Thank you.

6 MJ [LtCol SCHRAMA]: Okay. Mr. Trivett, are you prepared to
7 present argument on the 989 motion?

8 MTC [MR. TRIVETT]: Yes, sir. Colonel Bearden will be arguing
9 on behalf of the United States on this motion.

10 MJ [LtCol SCHRAMA]: Okay. Thank you.

11 DTC [COL BEARDEN]: Permission to approach, Your Honor?

12 MJ [LtCol SCHRAMA]: You may, Colonel Bearden.

13 DTC [COL BEARDEN]: Good afternoon, Your Honor. May it please
14 the commission, Colonel Joshua Bearden on behalf of the United States
15 of America.

16 "The prosecution deserves a trial date. The prosecution
17 deserves a trial date." Those were the words of Judge James Pohl on
18 July 23rd, 2018, almost eight years ago, 2,842 days ago to be exact.
19 Yet here we remain on the hamster wheel of litigiousness and
20 discovery and mired in pretrial litigation.

21 For years the proverbial long pole in the tent, if you will,
22 Your Honor, was discovery. Today, as an officer of this commission,
23 alongside my colleagues, we want to make clear that we recognize our

1 ongoing obligation and duty to fulfill our discovery obligations.

2 But thus far, 693,002 pages of discovery have been produced.

3 But it's not just the quantity. It's the quality. Amongst those
4 sections we've provided to the defense, our core prosecution and
5 case-in-chief materials, including the FBI investigation, which would
6 have bank, phone, hotel, immigration records.

7 We've provided hostilities materials, which nine years ago
8 was a matter for -- of concern to Mr. Connell, and understandably so.

9 We've provided governmental records, including those from
10 the Federal Aviation Administration and National Transportation
11 Safety Board and from all the airlines.

12 We've provided information regarding raids, whether they be
13 overseas or whether they comply with domestic United States searches
14 and seizures.

15 We've provided lab reports and audio and video.

16 And we've provided medical records and DIMS, which were a
17 material issue just a handful of years ago.

18 And we've completed substantially the AE 308 series
19 regarding RDI.

20 I would note for this commission that the original
21 10-category construct was largely resolved, not entirely, but largely
22 resolved almost 10 years ago with a deadline of September 30th, 2016.

23 And we've provided judicially approved summaries in

1 accordance with the laws that both protect national security and the
2 accuseds' rights to a fair trial.

3 Now, in reading the pleadings, one of the teams referred to
4 the government's request for a fourth trial scheduling order as,
5 quote/unquote, fanciful. Fanciful.

6 But I would remind this commission that prior to the
7 COVID-19 virus that derailed this case from having a trial, the
8 government was approximately 11 months away from going forward.

9 Now, as we stand here today asking for a date of 11 January
10 of 2027, we're much closer than we were then. We've provided some
11 additional discovery, yes. But we have also almost, to some degree,
12 this week and next, will have satisfied those motions to suppress
13 that were lingering in 2019 and 2020. So we're arguably better
14 positioned today than we were then.

15 So what we're asking for from this court is the
16 establishment of milestones that would return control to this court
17 and to this judge in a variety of ways. Let's set a trial date down.
18 Let's limit oral arguments to approximately 10 minutes per side,
19 focused on specified issues. It is the government's position
20 unequivocally that the only things preventing the dates that we have
21 proposed are 90-plus rulings on motions and the establishment of
22 those milestones.

23 So it's not fanciful. It's what we call -- I've been a

1 career federal prosecutor most of my adult life. It's what we call
2 in the interest of justice. Let's get down to business, because it
3 honors the rights of the victims. It honors the individuals sitting
4 back there as family members to have it. And it provides for the
5 parties procedural certainty that has been lacking for a very long
6 time.

7 Now, it's important to talk a little bit about the timeline.
8 I don't want to get inundated too much with dates and AEs, but it is
9 informative to talk about it. The timeline of this case reflects a
10 handful of things.

11 First, it's reasonable demands initially made upon the
12 prosecution to comply with complex discovery obligations. That's
13 true.

14 You know, sometimes the government, at our own admission,
15 might bite off more than we can chew about what we have produced and
16 what we can produce, and we have rectified that as we have gone
17 along. To the extent that it's been followed by an attestation from
18 officers of the court, officers of this commission, that we have
19 substantially satisfied our discovery obligations.

20 What has that gotten us? It's unresolved litigiousness and
21 a turnstile, quite frankly, of military judges that have come and
22 gone along the way. For the record, we have had three retire. We
23 have had another one take their own different assignment. Let's talk

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1 about that.

2 Tomorrow -- tomorrow is the 14th anniversary of the
3 arraignment in this case. The five accused, including
4 Mr. Binalshibh, who's not here now but was arraigned at the same time
5 jointly before this capital commission on eight referred charges of
6 the 2009 Military Commissions Act; namely, the conspiracy that
7 culminated in the worst mass murder in American history, with 2,976
8 dead and countless injured.

9 Soon after that arraignment, we had our first trial
10 scheduling order. That would have been on -- or request for
11 one -- on the 14th of June 2013. And understandably -- let's just be
12 honest -- the court in that instance a few months later denied that
13 request, and the quote was, "It's not within the realm of
14 possibility, given the delay of several outstanding motions."

15 Now, that part sounds kind of familiar. But it's
16 understandable that within just a matter of weeks of an arraignment,
17 it may actually be without -- be without the realm of possibility.

18 The second trial scheduling order request was argued on
19 March 24th of 2017. And we can look in the record of oral argument,
20 15441 through '501, a former colleague of ours, Ed Ryan, argued the
21 motion and asked for an original date of June of 2018. That would be
22 in AE 478 (Gov). Now, it was ultimately supplemented to a later date
23 which was 7 January of 2019.

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1 And at that time, just a week or so later, Judge Pohl in his
2 response says, "I'll take it under advisement."

3 So what have we got so far? "Not within the realm of
4 possibility," and "I'll take it under advisement."

5 What he did do was he issued 478BB. And he held the
6 government's feet to the fire about what he expected with respect to
7 the discovery obligations that would get us there.

8 And we responded in kind with 478CC, which said we
9 substantially have complied with a couple of things, our affirmative
10 pretrial discovery including case-in-chief evidence, and number 2,
11 we've substantially completed our responsibilities under AE 397F,
12 which were those 10 categories on RDI. Almost 10 years ago.

13 Accordingly, that leads us back to that original statement
14 that Judge Pohl made on July 23rd of 2018, that the prosecution
15 deserves a trial date.

16 But what happened next was a microcosm of what has happened
17 almost at every juncture since. Within weeks of making that
18 statement, Judge Pohl makes the decision -- it's his own decision
19 because he had been recalled -- to retire.

20 Unfortunately, he made the decision at that time, and this
21 isn't to cast any aspersions on Judge Parrella, but Judge Parrella
22 had informed him "within nine months I'm moving on to a new
23 assignment." Nonetheless, he was detailed. He served his nine

1 months admirably, and then he moved on to his new assignment, as he
2 said, without issuing a trial scheduling order.

3 Now, in June of 2019, he's replaced by Judge Cohen.
4 Interestingly enough, one of the first things that Judge Cohen did
5 within the first few weeks of his tenure on the bench in this
6 commission was solicit input from the parties about how to go forward
7 on a trial. That can be found in the transcript at 23649 through
8 '718.

9 And accordingly, we filed a third trial scheduling order
10 request in July of 2019. And lo and behold, on August 30th of 2019,
11 Judge Cohen issued AE 639M and established for the first time in this
12 case's history a trial date.

13 Now, that order was ultimately supplemented with a target
14 date of 11 January of 2021. That would be in AE 639 (2nd Amend).
15 But one of the interesting things that was said in the analysis by
16 Judge Cohen clearly reflects the sentiments of the prosecution today.
17 When explaining his rationale behind setting a trial date, he said
18 two things. He saw the need to overlay a structure on a process that
19 had none. And number two, he recognized that motions were driving
20 the docket rather than the docket driving the motions.

21 Now, I mentioned earlier, for most of my adult life I've
22 been a federal prosecutor for the United States Department of Justice
23 and have been before several United States federal district court

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1 judges. And I can say with certainty, even in complex cases, the
2 establishment of a trial date with established milestones and
3 obligations that are put on the government is the norm.

4 And another example that we have seen that's obviously
5 working, albeit a smaller continuance, is the conduct of Chief Judge
6 Fitzgerald, who has established a trial date in his case and made the
7 parties come to him about the litigation. The docket driving the
8 motions, not the motion driving the docket.

9 Now, he had to ask for, for a variety of reasons -- counsel
10 wanting to leave, a number of different logistical issues, which I'm
11 sure the defense, particularly after today, might want to raise. But
12 the United States Government is ready to go forward, and I think the
13 Chief Judge recognizes that.

14 Now, we had an 18-month delay due to COVID, but I think it's
15 worth noting that the prosecution kept working and met all the
16 established milestones that were set before them. And you can see
17 those milestones being met in AE 989 (Gov) Attachment D.

18 But back to that Murphy's Law, because of COVID,
19 Judge Cohen, who had willfully given us a trial date, announced his
20 retirement. You can't blame him. It's going to be a 450-day delay,
21 according to Chief Judge Watkins, before we can get back up. So be
22 it.

23 But we come out of that situation into what I call the sua

1 sponte reset. We've got a trial date. We've got established
2 milestones. We're working through discovery issues. We're ready to
3 do motions to suppress. And within a matter of months of being here,
4 Judge McCall sua sponte rescinded all the trial scheduling order
5 milestones except for notice of hearsay statements and the filing of
6 law motions. We sit here today with 90-plus of those law motions.

7 I point out for the commission that just a couple years ago
8 on the 8th of May 2024, a former colleague of ours, Mr. Christopher
9 Dykstra, specifically asked Judge McCall -- and I quote -- to give us
10 something we can focus on beyond suppression litigation.

11 And Judge McCall's response is, "I've been thinking along
12 those lines." So add that to the bucket of "we're beyond the realm
13 of possibility," "I'll take it under advisement," and "I've been
14 thinking along those lines." And you can find that in the transcript
15 at 46848 through 46849.

16 So what's happened since Mr. Dykstra came here and mentioned
17 that? 23 months have passed. No trial scheduling order. And last
18 year, his own free will, Judge McCall retires leaving those law
19 motions, 90-plus, unresolved. And we have identified those in our
20 pleading under AE 989 (Gov) Attachment B.

21 So what do we need from you? Let's just level with you.
22 What we need is to get off this hamster wheel of discovery and
23 litigiousness. Because what it has caused is protracted pretrial

1 litigation that has lasted for 14 years without an overlay structure
2 of where we're going and a backlog of 96 unresolved cases, not to
3 mention the prejudice that it's caused.

4 Now, how do we do that? It's easy to say here's the problem
5 without a diagnosis. Your Honor, here's the diagnosis. Here's what
6 the government thinks, quite frankly, respectfully, that you should
7 do: A prompt review and ruling on those 96 pending pretrial motions,
8 including 21 defense motions to dismiss and 14 motions to
9 suppress -- again, we've identified those in Attachment B of our
10 motion. The motions are fully briefed. There's no need for oral
11 argument. Judge, you can rule on those now.

12 As a matter of fact, in AE 690B at page 3, Judge Cohen said
13 as much, that they are thorough and well written. And my
14 counterparts across the aisle here, their responses are thorough and
15 well written. This isn't anybody's first day on the job.

16 So if you hear nothing that I say today, Your Honor, ruling
17 on the submissions alone represents the single-most efficient use of
18 this commission's time for the foreseeable future, if we can get a
19 trial date.

20 Why? Why does it matter right now? And there's three
21 reasons. Practicality, preventing further prejudice, and promoting
22 public policy.

23 As I mentioned earlier, the practicality of it, as in United

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1 States federal district court, if you substantially complied with
2 discovery, if you've got most of the motions headed in the right way,
3 obviously we have appellate issues that are going to be resolved and
4 the motion to suppress is going to be resolved either this week or
5 next in terms of having heard, you set a trial date and you put the
6 government to their burden.

7 MJ [LtCol SCHRAMA]: Colonel Bearden, while we're on
8 practicality, I have a few questions. There's approximately -- of
9 the 94 outstanding motions, I believe approximately 26 of those are
10 still discovery based, including three of which we're having argument
11 on here this week. The court can get through ruling on those by the
12 end of this summer.

13 What is then a reasonable date for trial that the government
14 thinks that we can get to -- right? -- considering the other motions
15 that still have to be ruled upon? Again, not knowing how the court's
16 going to rule, but there may be some additional discovery out of
17 those, the logistics of getting everything situated for a trial, and
18 then also understanding -- right? -- we have another trial that is
19 going to be starting somewhere between now and January ----

20 DTC [COL BEARDEN]: Sure.

21 MJ [LtCol SCHRAMA]: ---- theoretically. What is a reasonable
22 date that the government has surmised would be attainable?

23 DTC [COL BEARDEN]: Well, Your Honor, respectfully, the date

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1 that we've asked for is 11 January of next year. Okay?

2 MJ [LtCol SCHRAMA]: Now, with that ----

3 DTC [COL BEARDEN]: Is that fanciful? Perhaps.

4 But what I'd like to say is this. What you saw from the
5 chief trial judge in the other case, quite frankly, is he set a date
6 down with the understanding there could potentially be some
7 flexibility that has to be had.

8 We're not naive. We understand the difficulty that it's
9 going to be to resolve -- I mean, I don't think coming into this, and
10 I don't want to speak for you, but I don't think coming into this
11 situation there was any prediction that you were going to have
12 90-plus motions that you would have to rule on.

13 With that being said, if you get rid of two dozen of those
14 in some way, shape, or form, that leaves us with 70-odd motions.

15 What the government proposes is set us a date for early next
16 year. And with the rationale of, hey, this is burdensome what we're
17 having to resolve that was left before me, we understand that
18 flexibility.

19 But I think, based on what I said with respect to the chief
20 trial judge, my experience as a federal prosecutor, if you set the
21 date down -- they called it years ago the *Field of Dreams* -- if you
22 build it, they will come -- argument. Whatever.

23 The reality is, if you set it down -- and what you see in

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1 the Nashiri case, people have to get to work. Now, the understanding
2 is they may not go to trial, but they've done the hardcore work to
3 start moving toward that date.

4 MJ [LtCol SCHRAMA]: What do we do with Mr. Ali in setting a
5 trial date, right? There's been a ruling on the LHM motion that the
6 government has appealed. It's been sitting at the appellate court
7 for over a year now.

8 What happens in six months, we get to your January 11th
9 trial and it still isn't ruled on?

10 DTC [COL BEARDEN]: Well, then ----

11 MJ [LtCol SCHRAMA]: At a certain point, are you asking me to
12 sever them from this case?

13 DTC [COL BEARDEN]: No, Your Honor. Absolutely not. But what
14 we're saying ----

15 MJ [LtCol SCHRAMA]: So you would ask for a delay to wait for
16 that?

17 DTC [COL BEARDEN]: Certainly. Certainly. That would be one
18 of those rational bases to say, okay, you have an established trial
19 date. We were expecting a ruling by now. We have not gotten a
20 ruling by now. Parties, be flexible.

21 But you're getting people to work toward that date. It's
22 not like we're waiting, as we've pointed out in this argument.

23 MJ [LtCol SCHRAMA]: What if tomorrow the appellate court

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1 comes back and they uphold Colonel McCall's ruling? However -- and
2 I'm -- please don't -- this is all hypothetical ----

3 DTC [COL BEARDEN]: Sure.

4 MJ [LtCol SCHRAMA]: ---- so I'm not forecasting anything.
5 So, please, no one read anything into these questions.

6 But what happens if I then suppress one or two of the other
7 statements, and then we have two -- or one maybe, I don't know,
8 however you want to play it. But is it the government's intent to
9 appeal, then, those also?

10 DTC [COL BEARDEN]: Well, I don't want to speak for the chief
11 prosecutor of the commissions, who's the ultimate decision-maker for
12 what we do. But I think in this particular instance, we as a
13 prosecution team, would if we -- hypothetically speaking -- are
14 presented with a fact pattern where a couple are suppressed and maybe
15 a couple aren't, we would have to have an internal conversation as to
16 whether to keep the ones we have or cut them all loose. That's a
17 whole 'nother conversation that's way above my pay grade.

18 But in this instance, we would much rather have a trial date
19 and be presented with these hypotheticals as they transpire that
20 would then drive whether we needed to move it or whether it would
21 facilitate an amended request on the part of the government.

22 MJ [LtCol SCHRAMA]: I guess my concern, Colonel Bearden, is
23 on some level I don't disagree with you that a trial date may be

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1 directive. But faced with the uncertainty, it seems somewhat
2 imprudent to set a trial date where every time the government's
3 losing on a suppression motion, it's ending up in a year delay
4 waiting for that appeal.

5 And there may be situations -- right? -- where maybe Mr. Ali
6 pops out and it's suppressed and now we have another three.

7 DTC [COL BEARDEN]: Sure.

8 MJ [LtCol SCHRAMA]: So at that point, I mean, do we not sever
9 Mr. Ali then so that they can start proceeding to trial knowing their
10 LHM is suppressed?

11 DTC [COL BEARDEN]: Perhaps. I mean, it's a consideration the
12 government would have to make. I mean, I obviously can't make that
13 in a hypothetical space at this point in time as to some are in or
14 some are out.

15 And it may be that the government says with a trial date
16 with a willingness to go forward -- we're not saying this, make it
17 clear -- we may have to take considerations as to whether we would
18 want to use the statements. It's the government's position that we
19 have great facts and evidence along the way, including the
20 suppression arguments.

21 You know, to the extent that it's a hindrance to have a
22 trial date, there's an explanation on the government's behalf as well
23 as to why it's beneficial, quite frankly, in the ascertainment of

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1 information toward us going forward in our trial. For example, if we
2 needed, hypothetically speaking, cooperation for a particular witness
3 or information or whatever regarding this case, there are instances
4 in which you've probably heard this before: Come back to me when you
5 have a trial date.

6 And sometimes the machinations of the greater bureaucracy,
7 the machinations of cooperation of other parties that may not have
8 the same precise interest as the United States of America may require
9 some prodding by saying we have a trial date. We really actually
10 need to figure out whether this is something we can actually use or
11 not use to go forward in order to prove our case in chief because we
12 have the burden. And we accept it 100 percent.

13 But with a trial date, you set a mile marker that says we
14 understand all these things exist in this space that we have no
15 control over. I mean, I've just announced 693 pages -- 693,000 pages
16 of discovery and however many AE series that we're on now,
17 900-and-some-odd.

18 It's in a circumstance in which you've got to take that
19 information and make the best decisions you can with the information
20 that you have. And the information that we have right now is where
21 we are with the amount of discovery that we've provided, where we are
22 in the fact that we're rolling up the motion to suppress arguments,
23 where we are insofar as it relates to the prediction that some

1 appellate court is going to ultimately rule on some of these issues
2 says, Your Honor, we need you to show judicial leadership and look
3 over the horizon that when these things are resolved, that the
4 logistical machinations that the government has to do to get people
5 prepared to be here are set in place.

6 Now, the second point that I made earlier in the prongs as
7 to why now, we talked about the practicality and you raised obviously
8 great concerns. And the existence of another commission is another.

9 We built a second courtroom. You know, that was an issue
10 years ago. I can't remember which defense team raised it, but how
11 are we going to go forward when we only have one courtroom? How
12 are -- you know, and it's the "if we build it, they will come"
13 argument. The bureaucracy itself gets generated in that practicality
14 if you've got the trial date.

15 The second point I wanted to make in that area is preventing
16 future prejudice.

17 Now, there is a real human cost to this delay. Throughout
18 this litigation and all these relative trial scheduling orders,
19 whether it be 478 or 639A or even today in 989, we have consistently
20 for this commission identified victims and witnesses that are either
21 aging, infirm, or have passed away.

22 I would invite the court's attention in this instance to
23 pages 12 and 13 of our AE 989 motion, which lists 30 deceased that

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1 would have otherwise been relevant and material to either the merits
2 or the sentencing of our case.

3 And I want to point out for the record, as we were flying
4 here on Saturday morning -- as we were flying here on Saturday
5 morning, Jeanette Vigiano, mother of two victims of 9/11, one of her
6 sons was an F -- New York Police Department detective and the other
7 was an FDNY firefighter, Joseph and John. As we were flying here
8 Saturday, she was laid to rest in Deer Park, New York. Thirty-one.

9 90 percent of the FBI personnel that were originally
10 participants in the investigation of 9/11 are either no longer with
11 the FBI -- maybe they've passed away -- or they're no longer in
12 federal service. So it complicates matters for us as well, the
13 longest this goes on.

14 And the last area, the why now, if I ever may be so bold, is
15 let the record reflect I am holding up the Crime Victims Rights Act
16 under 18 U.S.C. Section 3771. This is United States federal law that
17 under Section (a) (7) says: For victims of crimes, they shall have
18 the right to proceedings free from unreasonable delay.

19 This September 11th will be the 25th anniversary of 9/11.
20 Tomorrow will be the 14th anniversary of the arraignment. 693,002
21 pages of discovery have been provided. Motions to suppress are being
22 resolved. Appellate issues hopefully will soon be resolved.

23 They call it fanciful, but it's absolutely necessary to have

1 a trial date. Quite frankly -- and I mean this as no
2 disrespect -- the defense will never agree to a trial date. It is
3 not in their interest to. They will not come before this commission
4 with a trial date no matter how many times they file a constitutional
5 claim for speedy trial rights.

6 2,842 days ago, Judge Pohl stated, quote: The prosecution
7 deserves a trial date.

8 This represents -- it represents almost a day of waiting for
9 each of the 2,976 that were killed that day.

10 The time is now, Your Honor. With a trial date, the United
11 States of America will announce ready, and we will be prepared to
12 call our first witness toward proving our burden.

13 Subject to your questions, sir.

14 MJ [LtCol SCHRAMA]: Colonel Bearden, no additional questions.
15 Thank you.

16 Mr. Sowards, would you like to be heard on this?

17 LDC [MR. SOWARDS]: I would, Your Honor. But, actually, we
18 have someone even better. It will be Major Theis from the Remote
19 Hearing Room.

20 MJ [LtCol SCHRAMA]: Oh, very nice. Thank you.

21 DC [Maj THEIS]: Hello, Your Honor.

22 MJ [LtCol SCHRAMA]: Hi, Major Theis. How are you today?

23 DC [Maj THEIS]: I'm good, sir. Hopefully everybody can hear

1 me. It's my first time doing this in the RHR.

2 MJ [LtCol SCHRAMA]: We can hear you. If there's any issues,
3 I'll let you know. You may proceed when you're ready.

4 DC [Maj THEIS]: Thank you, Your Honor.

5 The prosecution's request for a trial scheduling order is
6 not within the current realm of possibility and should not be
7 granted. This is not say -- not said to penalize but to be realistic
8 when looking towards a future trial date. It will take the time
9 necessary for the fundamental constitutional rights of the defendants
10 facing death or the possibility of life in confinement and taking
11 that time to vindicate those rights cannot and should not be denied.

12 Further, the commission can and should decline the
13 government's invitation to impose an artificial limit on oral
14 argument and instead continue the commission's reliance on the good
15 judgment of all counsel to focus their comments on the dispositive
16 issues framed by the pleadings and by the commission's questions.

17 Throughout the history of this commission, all the prior
18 military judges have afforded the time necessary to address important
19 issues, and these decisions were not made for the purpose of delay,
20 but on a determination of the measures appropriate in light of the
21 circumstances, that the inconvenience and postponements that are
22 inherent in the government's chosen venue, a remote, nearly
23 inaccessible island naval base, are not a bad-faith delay.

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1 During the last hearing, you experienced this very issue. A
2 power outage that affected the technology in the courtroom which
3 required generator power and delay in the middle of Mr. Gaudin's
4 testimony, and even during this hearing when we had to delay again
5 for power issues until approximately 1330.

6 What happened may be atypical for other courts, but it is
7 not atypical for Guantanamo. Prior military judges have had to
8 account for weather events postponing or canceling hearings and
9 delaying testimony; the impact of government shutdowns, the ELC or
10 the RHR losing power, and more.

11 Indeed, the government's chosen location for these
12 proceedings even significantly affected the commission's ability to
13 mitigate the effects of the historic COVID-19 pandemic to a degree
14 not experienced by other tribunals.

15 The necessity for time is to vindicate the constitutional
16 rights at issue in this case. And they have and continually have
17 been magnified and multiplied by official decisions made before and
18 shortly after the capture of the defendants.

19 The Senate Select Committee study on the CIA's Rendition,
20 Detention, and Interrogation Program found that it subjected the
21 defendants to what some euphemistically call mistreatment, which is
22 accurately defined as torture and cruel, inhuman, and degrading
23 treatment in the black sites where they were held incommunicado for

1 years.

2 The prosecution has conceded in the present LHM litigation
3 that what occurred was coercive mistreatment.

4 From the outset of the commission, and continuing to this
5 day, issues stemming from the government's actions in the black site,
6 including its efforts to prevent disclosure of information that
7 ordinarily will be routinely produced in any prosecution in America
8 in its courts have consumed the commission's principal efforts and
9 still have not been fully litigated.

10 As a result, among a few certainties in this case is that
11 there remains voluminous discovery to which the defense has not had
12 adequate access and virtually all of which the prosecution has
13 repeatedly and inaccurately represented that it has disclosed.

14 So turning to the issue of discovery, Your Honor, the
15 government has repeatedly represented that discovery is virtually
16 incomplete -- excuse me -- is virtually complete or its discovery
17 obligations have all been met subject to an ongoing obligation of
18 disclosure.

19 However, with its repeats of this case, a trickle of
20 discovery is happening, trial counsel has suggested that this
21 outstanding bit is so small. But when you actually look at it, it
22 swells to a torrent once the government has been compelled to
23 disclose through successful defense motions the commission has

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1 granted.

2 Now, once disclosed the information is not neatly digestible
3 or manageable. It is thousands of pages, hours of videos, all of
4 which takes time to read and analyze, which also requires further
5 investigative steps to develop.

6 In its own request for trial, AE 989, the government has
7 acknowledged that it has at this point produced 655,000 pages of
8 discovery -- that was back in January -- understanding that Colonel
9 Bearden has given an even larger amount of discovery. So 655,000 in
10 its 13 years.

11 However, if the government had been given and maintained its
12 first requested Trial Conduct Order on 14 June 2013, nearly
13 78.2 percent of all the discovery, approximately 512,300 pages would
14 not have been provided to the defense. Because between each request
15 for trial date, more and more discovery has been provided.

16 MJ [LtCol SCHRAMA]: Hey, Major Theis?

17 DC [Maj THEIS]: Yes, sir.

18 MJ [LtCol SCHRAMA]: I'm just getting a message from the
19 interpreter. If you could just slow down a little bit, it would be
20 easier for them to interpret in real time.

21 DC [Maj THEIS]: Of course. I apologize to the interpreters.
22 I saw it and I thought I had slowed down enough but I will go even
23 slower.

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1 MJ [LtCol SCHRAMA]: Thank you.

2 DC [Maj THEIS]: Yes, sir.

3 So between AE 178 (Gov), the government's motion for a trial
4 scheduling order and notice of status of discovery, which was on 14
5 June 2013, up to the second Trial Conduct Order request of AE 478
6 (Gov), which was filed on 3 January 2017, during those three and a
7 half years, the government provided 198,300 pages, approximately
8 30.27 percent of that 78.2 percent total I gave you.

9 At the time, the government assured the prosecution -- the
10 commission that it only had photographs relevant to September 11th
11 and some business records outstanding. But a great part of the
12 discovery going forward was due to the release of the SSCI Report on
13 the CIA torture program, which was released in December 2014, and has
14 focused on the interconnectedness between the FBI and the CIA which
15 the government initially and publicly denied.

16 Then between AE 078 (Gov), that second Trial Conduct Order,
17 and its third, AE 639A filed on 3 July 2019, during this approximate
18 two-year period, there were three outlays of additional discovery.
19 The first was 27,200 pages, followed by their supplement six months
20 later which provided an additional 56,000 more pages.

21 And then in that period, with Judge Pohl's order -- excuse
22 me. That was the 56,000 pages at 478CC. With 478 (Sup), it
23 was -- you know, sir, I'm not going to get bogged down in the

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1 numbers. I will tell you the end number was a total of 151,600
2 pages, or 23.14 percent, during an additional two-year period.

3 Now, between TCO three to TCO four where we are today,
4 between 3 July of 2019 to AE 989, the government once again has said
5 that discovery is down to a trickle. But during these past five
6 years, they have produced an additional 162,400 pages, or 24.79
7 percent of that 78.2.

8 Indeed, they originally stated in that stoplight chart they
9 referred to in AE 989 Attachment D that all of their discovery was
10 done on 1 November of 2019, with the caveat that it had been
11 compelled to provide additional discovery to the commission in 32
12 different motion series over six years past its certification date.

13 And Colonel Bearden today stated we are at 693,000 pages,
14 which doing public math, Your Honor, is an additional 38,000 pages
15 since January of 2026.

16 Ultimately, the answer is the government has not been
17 reliable or accurate in its -- in giving the commission a realistic
18 appraisal of the ultimate state of the evidence. It has been defense
19 motions and the commission's rulings that have yielded the discovery
20 the defense has been entitled to.

21 It is in stark contrast from the original state of discovery
22 in 2013 with only 142,700 pages versus where we are today. So
23 consequently, the issue of discovery has not been fully resolved

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1 despite the government's most recent demand to the commission that
2 the discovery phase of the proceedings should be hastily brought to a
3 close.

4 I would also invite Your Honor's attention to AE 824 (Gov),
5 their motion in limine to exclude further evidence of FBI/CIA
6 cooperation irrelevant to the proceedings filed 28 June 2021, wherein
7 the government exasperatedly attempted to prohibit not just discovery
8 but the presentation of the evidence in the defense's possession
9 showing FBI and CIA cooperation in conducting the black site
10 interrogations.

11 The record has demonstrated throughout the years the
12 prosecution has worked to maintain the fiction that the FBI and CIA
13 were separate entities, that the FBI were the good guys coming in to
14 clean up the CIA's improprieties in the black sites. Yet the
15 commission has heard multiple witnesses who repeatedly demonstrated
16 the FBI and CIA were working hand in glove. This issue of
17 interagency coordination is not finished.

18 Indeed, the government delayed providing pertinent
19 information until after a witness had finished testifying, such as in
20 the case of retired FBI Agent Francis Pellegrino in September 2023,
21 until he had completed his testimony and had left the witness stand
22 to provide information regarding a deliberate program to suppress
23 evidence of the RDI torture program.

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1 Again, the government has tried for years to block
2 acknowledgment or existence of these in-tandem operations repeatedly,
3 despite the fiction being largely disproven over and over. And that
4 fiction was disproven through the commission ordering additional
5 discovery that the prosecution was compelled to provide to the
6 defense, which leads to a legitimate question: Not including
7 continually providing the discovery, such as medical records or DIMS,
8 when is the next large outlay of discovery? Where could it lead?

9 And despite the repeated assurances from the government,
10 they simply do not know. We can't connect the dots because we can't
11 get access to the dots. And the government continually denies us
12 access to the dots without the commission compelling discovery.

13 It is not the right time to schedule a trial.

14 Now, Your Honor, turning to the history of the commission.
15 In support of its position, the government now suggests the history
16 of the commission begins with its second arraignment of Mr. Mohammad
17 in May of 2012 and tells a story of delay.

18 The government's narrative essentially ignores the
19 proceeding nine years following the government's capture of
20 Mr. Mohammad on 1 March 2003 and its failure to bring him in a timely
21 manner before a court to stand trial, instead disappearing him into
22 CIA black sites for the next three and a half years.

23 Even after it announced that the government was transferring

1 Mr. Mohammad from its then-current black site to Guantanamo in early
2 September 2006, the government continued to deny him access to
3 attorneys or give him a court date until June 2008.

4 All of this delay was because of the decisions that the
5 government made to torture Mr. Mohammad and thereafter to fashion
6 legal strategies to suppress the details and evidence of its actions.

7 I will not repeat all the information provided in our
8 response at pages 5 to 18 refuting the government's suggestion that
9 the commission's work between 2008 and the present has accomplished
10 only delay.

11 I would, however, like to address the government's decidedly
12 critical tone regarding Judge McCall not setting a trial date after
13 its May 2024 request or resolving all of the motions to suppress the
14 LHM statements.

15 The government's complaint again ignores the historical
16 context. Judge McCall was redetailed in August 2021 after the
17 COVID-19 crisis disruption, which we all remember brought the world
18 to a halt for two years.

19 By May 2022, after Judge McCall had been the redetailed
20 military judge for approximately six months, the government
21 approached the defense to initiate settlement offers. For a capital
22 case, if the government is approaching for a negotiation, it means it
23 is for a plea that will not include death.

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1 So in March 2022, the parties jointly moved the commission
2 to postpone the hearings, while the prosecution and defense came to
3 Guantanamo to negotiate a settlement. Judge McCall granted this
4 postponement. Moreover, during these settlement negotiations held on
5 Guantanamo, the defendants regularly attended.

6 When these negotiations were unsuccessful in 2023, the
7 parties resumed what trial counsel at one point described as a
8 crushing litigation schedule on the LHMs. Yet negotiations
9 continued.

10 So, yes, there was a request in May of 2024 for the
11 consideration of a trial schedule. And less than three months later,
12 on 1 August 2024, trial counsel rose to announce plea agreements had
13 been signed for three defendants thereby ending the LHM litigation
14 that dominated the last two years of hearings for three defendants.

15 The Secretary of Defense's decision to withdraw after the
16 plea agreements were signed cast aside 27 months of negotiations.
17 Cast aside the speedy resolution where the sentencing portion after
18 the guilty plea would have been accomplished approximately July of
19 this year.

20 Then because of the Secretary of Defense's Friday night
21 decision, most of the next two years have been spent litigating the
22 government's challenges to Judge McCall's decision upholding the plea
23 agreements in both CMCR and the D.C. Circuit.

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1 That was the government's decision. The Secretary of
2 Defense made the initial decision to withdraw, but all of this is
3 still the government's decision.

4 The government negotiated. The government agreed to pause
5 the proceedings to focus on negotiation. The government signed and
6 agreed to PTAs. And then the government decided to cast them all
7 aside.

8 The overall result is that the government, not Judge McCall,
9 who resolved the LHM motion of the only eligible defendant who did
10 not settle his case, but the government has caused over four years of
11 needless delay and wasteful distractions from the litigation of this
12 case.

13 Your Honor, at this stage no one here can make an accurate
14 prediction of a realistic trial date and interim binding milestones
15 where there remain so many outstanding complex questions. Therefore,
16 creating an artificial deadline serves no one.

17 What realistically can be done is what Your Honor has
18 already begun doing with the TCO and the LHM litigation, and the
19 specified questions regarding the related AE 524 series. Those offer
20 concrete, methodical approaches to clarifying and resolving the
21 motions.

22 As a starting issue, the commission must address the
23 government's litigation posture after the CMCR provides its decision

1 in Mr. al Baluchi's case. If Mr. al Baluchi prevails at the CMCR and
2 it upholds the suppression of his LHM, will the government let it
3 stand, or will they pursue additional remedies at the D.C. Circuit?

4 In the event the government does pursue those remedies, how
5 does that affect Mr. al Baluchi's reintegration into this case where
6 three defendants are still litigating their own LHMs?

7 Similarly, if after all witnesses and evidence are presented
8 for our own LHMs, if the commission suppresses them, will the
9 government be waiving its appeal to CMCR, or will it pursue a similar
10 course as it has with respect to Mr. al Baluchi?

11 You heard from Colonel Bearden. He can't hold the
12 government to one path or the other. They're going to have to have a
13 team discussion.

14 But what is important to recognize is that the present LHM
15 litigation was Judge Parrella's requirement to establish an
16 appropriate record for the AE 524 litigation which, as Your Honor
17 knows, is still pending.

18 This leads to two paths: One, either we, the defense, wins
19 the LHM and it is suppressed at this time; or two, we lose, and we
20 pursue the AE 524 litigation claim on the failure to support the
21 suppression motion.

22 The purpose of AE 524 is to evaluate how the defense has
23 been prevented from interviewing witnesses with firsthand knowledge

1 of the black sites and the mistreatment, the coordination between FBI
2 and CIA, and ultimately from calling to establish a record of the
3 standard of care because of the chilling effects of Protective Order
4 #4 and being hamstrung by invocations of national security privilege.

5 While the avenues by Your Honor's orders in the LHM, TCO and
6 AE 524 series will yield productive next steps, it is clear that at
7 present there is no clear answer, only uncertainty. The only thing
8 certain is this case won't be ready for trial in January 2027.

9 And from our experience with the PTAs, even if trial counsel
10 could represent only one course of action which would be taken, only
11 one way forward, unfortunately a superior could snatch that statement
12 away and demand a different course of action altogether.

13 And even their argument that U.S. v. Al Nashiri has a trial
14 date in June 2026 and, therefore, can likewise apply to this
15 commission has been upended by the Nashiri commission's own
16 litigation needs. Now their trial has been delayed and that
17 June 2026 is now to an undetermined start date, perhaps later in
18 2026, perhaps even later than that.

19 So returning to our commission. This uncertainty is not
20 merely for the LHMs, but also for all the remaining outstanding
21 motions. It is at a minimum an unwarranted assumption, if not
22 presumption, for the government to request a trial date predicated on
23 the government's expectation that every pending motion to compel

1 discovery or motion to dismiss will be resolved in its favor.

2 For each motion that is not decided in its favor, will the
3 government appeal? Will it pursue a writ of mandamus?

4 The worst possible scenario for attempting to establish
5 mandatory milestones leading to a January 2027 trial date is for one
6 party, including the government, to seek relief in the CMCR,
7 D.C. Circuit, or Supreme Court, which is exactly what the government
8 is currently in the midst of doing at the CMCR in Mr. al Baluchi's
9 case.

10 Finally, I would be remiss not to address the proposed oral
11 argument limit on motions going forward. The government has proposed
12 a 10-minute cap to all oral argument, no matter the issue.

13 However, all parties recognize that this is an important,
14 significant case. A more important point is that such an arbitrary
15 and severe limitation across the board would operate as a denial of
16 due process. The opportunity to be heard. Demanding or imposing an
17 artificial limit does not serve the interest of justice within the
18 military commission. Instead, it leads to slipshod legal practice.

19 Indeed, the commission controls the flow and the
20 presentation, has the authority to order a counsel to halt a brief on
21 a particular topic and to move on to one or more topics of greater
22 interest to the commission. The gravity of this case, the extremely
23 material evidence that must be litigated here requires that the

1 litigants be allowed to present meaningful, constructive oral
2 argument.

3 The commission even recognized this at our March hearing
4 when asking how long each side would need for oral argument. And the
5 government requested an hour for oral argument on its Trial Conduct
6 Order request.

7 This illustrates the very point. Oral argument should not
8 be limited artificially. It is unreasonable for the prosecution to
9 advocate for a limit when their unstated rationale is to rush towards
10 the unattainable, unrealistic, and unfair January 2027 trial date.

11 It has taken 13 years in this current iteration of the
12 commission for the defense to attain the hard-fought progress that
13 they have in dislodging the sort of material evidence from the
14 government that should have been provided to the defense at the date
15 of arraignment in 2012.

16 The government wants to argue there are legitimate barriers
17 such as national security, classification standards, and consulting
18 with three-letter agencies. Even so, this doesn't diminish the time
19 and effort that life-and-death questions demand be expended in order
20 to ensure a full and fair hearing.

21 Your Honor, the government's requested trial date is
22 unserious at this stage of the litigation. There are too many
23 unresolved issues. The future is uncertain. And if it was

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1 established, it would lead to a domino effect of slipshod litigation,
2 interfere with meaningful trial preparation, and severely and
3 negatively impact constitutional rights.

4 The underlying motion echoes the government's second trial
5 setting request with Judge Pohl when he was moved to explain it was,
6 quote, not within the realm of possibility at this juncture, end
7 quote, because of the time reasonably necessary for issues that had
8 not been resolved.

9 This is true now because of the confluence of the LHM
10 litigation and the pending motions, including Mr. al Baluchi's
11 resolution at present. Therefore, the government's request should be
12 denied in its entirety.

13 Pending your questions, sir.

14 MJ [LtCol SCHRAMA]: No questions, Major Theis. Thank you.

15 DC [Maj THEIS]: Thank you, Your Honor.

16 MJ [LtCol SCHRAMA]: Mr. Connell?

17 LDC [MR. CONNELL]: Thank you, sir. May we approach the court
18 reporter, have some documents marked?

19 MJ [LtCol SCHRAMA]: You may.

20 **[Pause.]**

21 MJ [LtCol SCHRAMA]: Mr. Connell, would a brief break be
22 useful?

23 LDC [MR. CONNELL]: It seems about that time, sir.

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1 MJ [LtCol SCHRAMA]: Yeah. We'll take a comfort break. We'll
2 take 15 minutes. The court will be in recess and then we'll resume
3 with argument.

4 Court's in recess.

5 **[The R.M.C. 803 session recessed at 1507, 04 May 2026.]**

6 **[The R.M.C. 803 session was called to order at 1526, 04 May 2026.]**

7 MJ [LtCol SCHRAMA]: This commission is called to order.

8 All parties previously present are again present.

9 Just a small administrative note. I do realize it is warm
10 in here. I have asked the appropriate people to please look into it
11 and try to figure out a resolution for that at least by tomorrow, so
12 I am tracking that.

13 Mr. Connell, are you ready to proceed?

14 LDC [MR. CONNELL]: Yes, sir.

15 MJ [LtCol SCHRAMA]: You may proceed when you are ready.

16 LDC [MR. CONNELL]: Thank you.

17 LDC [MR. SOWARDS]: And I'm sorry, Your Honor, if I may just
18 note on the record that Mr. Poteet needs to be excused for another
19 matter he's taking care of, but he has been here.

20 MJ [LtCol SCHRAMA]: Thank you, Mr. Sowards.

21 LDC [MR. SOWARDS]: Thank you, sir.

22 LDC [MR. CONNELL]: Sir, before addressing the merits of
23 AE 989, the government motion for a trial scheduling order, I have

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1 three quick preliminary matters.

2 The first is with respect to the ongoing controversy in
3 AE 551 about the denial of the public trial because the pleadings are
4 not available to the public. With this particular series, the 989
5 series, not a single one of the pleadings has been available -- been
6 made available to the public, including the government pleading,
7 which usually moves fairly quickly through the -- through the
8 process.

9 Despite the substantial amount of time that has passed since
10 the filing, if the victim family members or the media, the public, or
11 the NGOs who could -- were not able to attend today wanted to follow
12 along in the pleadings, they could not do so because they're not
13 available to them.

14 The second is that I'll be relying on slides which are now
15 in the record at 9 -- AE 989K. And because this is the first time
16 that I've used slides in front of you, I just want to describe what
17 the process is that is necessary before we can display anything to
18 the public under Rule of Court 7.2.5, which was formerly AE 118W
19 (Amend) and then it was incorporated into the new revision of the
20 Rules of Court.

21 For that we -- in order to display anything to the public,
22 we are required ten days in advance of travel, that is the Friday
23 before the Friday that we travel, to produce all of the documents in

1 the form that we will display them to the CISOs who submit them to
2 the SC/DRT, the Security Classification/Declassification Review Team.

3 Then on the day of the hearing, no later than 0800, we are
4 required to produce the whole thing again to the CISOs again in
5 exactly the same form that we did that before. And then the CISOs
6 have to wait for the SC/DRT to give them a thumbs-up before we can
7 proceed.

8 I say this not -- we complied with that and we've learned
9 how to comply with it, but it is a substantial issue, burden
10 before -- I've watched the government struggle with it as well in
11 order to have one's materials for presentation completely ready ten
12 days in advance of the actual hearing.

13 And then the third thing I'd like to note is that Colonel
14 Bearden's excellent argument took 28 minutes.

15 Turning to the merits, Your Honor, George Santayana famously
16 said that, "Those who do not study history are doomed to repeat it."
17 And I think it bears a little bit of review of the authorities that
18 the government argued.

19 The government began by arguing that in 2013, in the AE 175
20 series, that it asked for a trial date of September 2014. And as all
21 the parties so far have noticed in AE 175F, Colonel Pohl said that
22 that was not within the realm of possibility.

23 What the government did not mention is that in AE 175, as

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1 officers of the court, the government represented that discovery
2 would be complete by August of 2013.

3 Now, the year after that, in 2014, the government first
4 volunteered to make discovery regarding torture after there had been
5 a ruling adverse to the government in the al Nashiri case.

6 So their first acknowledgment that they were willing to
7 produce information about the Rendition, Detention, and Interrogation
8 Program came essentially contemporaneously with their first proposed
9 trial date. That's in AE 397 is their offer. They tried to
10 consolidate some arguments that Mr. al Baluchi had made and imposed
11 the ten-category construct.

12 Now, for their second request for a trial scheduling order
13 in January of 2017, in AE 478, they asked for a March 2018 trial
14 date. And the voluntary discovery that they had said this is what we
15 want to do in order to essentially blunt some of the specific
16 requests that Mr. al Baluchi had made, their voluntary discovery
17 about the RDI Program was not complete until March 2018, the date
18 that they proposed for the trial.

19 Now, shortly after that, in May of 2018, under significant
20 pressure, the government revealed for the first time that the Federal
21 Bureau of Investigation had been substantially more involved with
22 black sites interrogations than they previously had acknowledged.

23 You notice the evolution in the case of the -- that

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1 originally the LHM statements were called clean team statements. And
2 even in 524LLL, Judge Parrella called them clean team statements.

3 In May of 2018, essentially the government abandoned that
4 language, later enforced by Judge Cohen. But the reason why they
5 abandoned it was it became clear that these teams were not clean in
6 any way; that the FBI had been intricately involved in the sending of
7 questions, the extraction of information, and sometimes more in the
8 black sites. And that -- that was not acknowledged by the government
9 until May of 2018.

10 And the discovery that had come along with that, which had
11 been known as the intelligence requirements, that is the documents
12 which were sent by the FBI to the CIA for the extraction of
13 information for Mr. al Baluchi and others, those were not produced by
14 the government until February and March of 2019, which was after the
15 January 2019 trial date they had requested in AE 478.

16 So for the second time, the government continued
17 critical -- it's not about numbers, as the government argued it, it's
18 about quality, and argued -- and did not produce some of the most
19 significant evidence in the case until after the trial date they had
20 proposed.

21 Now, it is true that Judge Cohen, in AE 639M, did set a
22 trial date of January of 2021, based in part, I'll note, on the same
23 argument that the government made today that there are other

1 government actors who do not have -- and I quote here -- the
2 interests of the United States at heart and are apparently attempting
3 to slow or act adversely to the interests of the prosecution here.

4 And when the proceedings were suspended in March of 2020
5 because of the global pandemic, I count that there were ten months
6 left, March to January, the government calls that 11 months, that's
7 fine, let's call it 11 months. But when proceedings resumed in
8 September of 2021, it became abundantly clear that that 11 months'
9 timeline, runway, would never have resulted in a trial date. Because
10 at that point, just on the litigation of the LHM statements for
11 Mr. al Baluchi, there was an additional 44 months, an additional ten
12 hearings, and an additional 22 witnesses that were required, which
13 would blow well beyond the government's proposed trial date of
14 January 2021.

15 And, in fact, I'll note that the government's appeal of
16 AE 942SSSS has already lasted more than a year, has already lasted
17 more than the ten to 11 months runway that remained before the
18 proposed trial date of January of 2021.

19 So the reason why I say this is that the emphasis
20 by -- placed by the government on their representations as officers
21 of the court does not necessarily mean that the representations that
22 a January 2021 trial date, for example -- excuse me -- 2027 trial
23 date is realistic -- do not necessarily mean that those

1 representations should be taken at face value by the court.

2 In fact, on 4 March of 2024, at pages 42931 to '932 in the
3 transcript, the government represented to the military commission, as
4 an officer of the court, that it had been, I quote, crushed, end
5 quote, by the commission's, quote, very aggressive timeline, end
6 quote, that it had pursued up to that time.

7 This is important because of the non-answer to the military
8 commission's question -- first question to the government, which is:
9 Let us assume that the military commission can act on the 26
10 discovery motions by the end of the summer. It's not unlikely that
11 some will be denied, some might be granted, the ----

12 MJ [LtCol SCHRAMA]: Mr. Connell, can I ask you a question
13 about those?

14 LDC [MR. CONNELL]: Yes, sir.

15 MJ [LtCol SCHRAMA]: Of those 26, three of these are the LHM
16 motions that we're here to discuss this week.

17 LDC [MR. CONNELL]: Sure.

18 MJ [LtCol SCHRAMA]: So of the remaining 23, the majority of
19 them seem to be compliance issues that are remaining for the court to
20 kind of sift through. And as I've already started issuing some
21 rulings in these, some seem to be complied with and other ones, you
22 know, we've adjusted kind of the government's responsibility to that.

23 Within those, are you tracking any substantial issues that

1 need to be resolved within those remaining motions?

2 LDC [MR. CONNELL]: The -- I have followed with interest the
3 military commission's distinction between an initial compel and
4 compliance. And, you know, the 642 series is a good example of that
5 because the government represents that it has completed its
6 discovery. We believe that it hasn't. And so we move for
7 appropriate sanctions.

8 Certainly with respect to the 308 series, that same sort of
9 thing is going to happen, 703 series. The -- there are places where
10 after substantial guidance by the military commission, we have worked
11 together to say, okay, we have gotten everything that we can.

12 A perfect example is the medical records. There -- we have
13 spent dozens and dozens of hours, the government and our team,
14 reconciling the medical records, going page by page through originals
15 and the produced copy. And we have found, we think, all the examples
16 where the government cannot comply because it has destroyed or
17 permanently redacted medical records of Mr. al Baluchi.

18 Now, at that point, until this series of rulings from the
19 military commission, I would have called the next step a motion to
20 compel, but a motion for appropriate sanctions or appropriate relief
21 is perfectly fine.

22 So we do have -- there are some remaining issues which are
23 in that categorization pure motions to compel. And we have an

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1 appropriate spreadsheet. We could certainly advise the military
2 commission as to which ones we think.

3 And then -- because I see the distinction the military
4 commission is drawing between compliance and original compulsion, and
5 we'd be prepared to address that. The -- I don't know them off the
6 top of my head other than the ----

7 MJ [LtCol SCHRAMA]: That's fine. I'm not necessarily wanting
8 to go completely down this rabbit hole. But just generally, I'm just
9 trying to make sure I'm tracking ----

10 LDC [MR. CONNELL]: Right.

11 MJ [LtCol SCHRAMA]: ---- if there's another large issue that
12 is going to divert the commission's time in a substantial manner.

13 LDC [MR. CONNELL]: Right. The -- you know, as the -- as the
14 government has observed in its pleadings, and I think is correct,
15 that over time the discovery issues become smaller and smaller. They
16 become more and more targeted. That happens for a couple of reasons.

17 The first is that having received a tranche of discovery
18 from the government, we can see what they redacted, what we think
19 should be there that's not there, and the issue becomes smaller and
20 smaller.

21 The other is that as we prepare for trial, in it -- issues
22 related to a specific witness, for example, or something like that
23 come into play, and so the issues get smaller and smaller.

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1 So I understand what you mean about is there something else
2 huge out there. I think the huge issues do fall -- which are medical
3 records and hostilities, do fall into the compliance category where
4 we're going to have to litigate did the government comply? And if
5 not, what's the appropriate step -- next step after that?

6 MJ [LtCol SCHRAMA]: Okay. Another question, and then I will
7 certainly let you get back on track.

8 LDC [MR. CONNELL]: No, sir. I love questions.

9 MJ [LtCol SCHRAMA]: You stated in your brief the military
10 commission would profit from a reality-based approach to the pending
11 litigation posture rather than an impossible trial date. Once the
12 admissibility of the LHM statements of each defendant is resolved,
13 including government appeals, then it will be reasonable to set a
14 date for filing of evidentiary motions, final production deadlines,
15 and trial.

16 Hypothetically, if in August the appellate court comes back
17 and upholds Judge McCall and there's seemingly a resolution to the
18 LHM statement in your case, based on that, what would be a reasonable
19 date that you see that the court could look to as a possible trial
20 date?

21 LDC [MR. CONNELL]: Yes, sir. May I have the feed from
22 Table 4?

23 MJ [LtCol SCHRAMA]: Yes, you may.

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1 LDC [MR. CONNELL]: This is our slides, which are marked for
2 the record as AE 989K. They have been through the process that I
3 described and are approved for display to the gallery.

4 May I request display to the gallery?

5 MJ [LtCol SCHRAMA]: You may.

6 LDC [MR. CONNELL]: All right.

7 Mr. Adams, could you move to the fourth slide?

8 MJ [LtCol SCHRAMA]: And, Mr. Connell, if you're going to
9 touch upon this, I don't necessarily want you to go out of order,
10 so ----

11 LDC [MR. CONNELL]: Oh, okay. Well, in that case, Your Honor,
12 I have an answer to that question and will get there shortly, if that
13 works.

14 MJ [LtCol SCHRAMA]: It does. And then maybe you'll touch
15 upon this, but I'll ask the question now.

16 Once discovery is complete, what is the next large
17 litigation milestone that you see in this case?

18 LDC [MR. CONNELL]: Yes, sir.

19 MJ [LtCol SCHRAMA]: And then with those questions, I'll let
20 you continue.

21 LDC [MR. CONNELL]: Yes, sir. Certainly.

22 The -- I was just about to come to this same topic. So
23 keying on the sentence that the military commission asked about, one

1 of the reasons why I suggest that a date certain at this time is not
2 a realistic approach is because the unpredictable duration of the
3 government appeals.

4 The -- I did lay out here ----

5 MJ [LtCol SCHRAMA]: And just so we're clear, for my question,
6 I want you to assume hypothetically ----

7 LDC [MR. CONNELL]: Yes, sir. I'm getting -- I will get
8 there.

9 MJ [LtCol SCHRAMA]: Yeah. The LHM is not -- is continued to
10 be suppressed and there's no additional government appeal.

11 LDC [MR. CONNELL]: Yes, sir. I understand that. And I do
12 want to answer the question, so I'm going to skip two slides ahead,
13 please. Let's go straight there.

14 Here is my modest proposal that I believe answers your
15 question, both of them, which is: How can we account for the
16 unpredictability of the ----

17 LDC [MR. ENGLE]: Excuse me, Your Honor. We don't have the
18 feed up at our table.

19 **[Counsel conferred.]**

20 LDC [MR. CONNELL]: No worries. Do you have the hard copies?

21 **[Counsel conferred.]**

22 LDC [MR. CONNELL]: Okay. I'm getting thumbs up, sir.

23 MJ [LtCol SCHRAMA]: What's that, Mr. Connell?

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1 LDC [MR. CONNELL]: I got a thumbs-up from Table 2, so.

2 MJ [LtCol SCHRAMA]: Okay.

3 LDC [MR. CONNELL]: What I believe an approach that would
4 address the unpredictability of the actions around the CMCR or an
5 appeal or something else is to key a trial setting to the end
6 of -- to the completion of LHM statement litigation. And that
7 statement -- that sentence is doing a lot of work here, so I want to
8 explain what I think it means.

9 The -- we are in a situation in Mr. al Baluchi's case where
10 there will be probably sometime this summer, we're guessing, a
11 ruling, as the military commission has posited, from the CMCR.

12 At that point a couple of -- there's a couple of things that
13 could happen. The first one is --

14 And if we could go back one slide, please.

15 The first one is let's assume, as the military commission
16 says, that the -- that Judge McCall's decision is affirmed. At that
17 point the government can seek mandamus.

18 Under R.M.C. -- you know, there's a
19 confusion between -- there's a conflict between R.M.C. 908 and
20 10 U.S.C. 950d about whether they can appeal or not. I think the
21 answer is probably that they can't appeal, but they can seek
22 mandamus, but they could seek further review.

23 On the other hand, there are further actions if the CMCR

1 does not affirm and instead returns the issue to the military
2 commission. Because as you will note, Judge McCall took a similar
3 approach to the one that you are taking where the question was: Did
4 the government meet its burden of proof? And then if it did, then we
5 would come back and address the defense witnesses question.

6 So I came up -- and there are three different challenges
7 that the government made on appeal. I've sort of traced out in this
8 slide the different things that could happen.

9 The -- it may be that you -- it would come back down and
10 you'd have to address the motion to compel witnesses in 628B and
11 listen to Mr. al Baluchi's defense case.

12 It's possible there are -- you will recall that
13 Judge Parrella only ordered that the defendants file their motions to
14 suppress on voluntariness grounds. We went further and did the
15 949r(a), obtained by torture grounds as well, but there are other
16 grounds to attack the motions of the LHM statements. And then the
17 government's third argument is merely a procedural one under
18 304(a)(5).

19 So there are different things that could happen. So the
20 reason why I am saying completion of all LHM statement litigation is
21 that there's a lot of ways that this could go. That could be
22 mandamus. That could be defense mandamus. That could be further
23 litigation around the motion to compel and additional witnesses from

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1 the defense. We don't know.

2 That same framework applies to the other defendants as well
3 in that the military commission may choose to issue a ruling at this
4 point after hearing the arguments this week about whether the
5 government has met its burden of proof or not.

6 If the government -- excuse me. If the military commission
7 rules that the government has met its burden of proof, the government
8 has the opportunity for an interlocutory appeal. If it rules
9 that the -- excuse me -- that it hasn't met its burden of proof, the
10 government can have an interlocutory appeal. If it rules that it has
11 met its burden of proof, the defense can go forward with the case
12 that they want to present.

13 All of this really is a government decision.

14 MJ [LtCol SCHRAMA]: And for my hypothetical, assume you're
15 all similarly postured.

16 LDC [MR. CONNELL]: Assume we're all similarly postured,
17 right.

18 MJ [LtCol SCHRAMA]: Right, in my hypothetical -- one of two
19 things, right? Either they've been suppressed and the government has
20 chosen not to appeal those three, or they've been suppressed,
21 government has appealed and they've been severed -- or you've been
22 severed, I guess would be the better word. So either
23 way -- right? -- there's finality to my question to you.

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1 LDC [MR. CONNELL]: Tracking, sir. And the answer to your
2 second question is what is the next major milestone? In our view,
3 the next major milestone is the deadline to file defense evidentiary
4 motions.

5 The government has correctly observed that the deadline to
6 file law motions, which was originally put in place by Judge Cohen,
7 has passed. There is onesie-twosie law motions that might still be
8 out there or have been out there, but the next major issue is the
9 evidentiary motions.

10 That is, we have -- we have heard and seen a substantial
11 preview of the government's case through the LHM litigation. There
12 are recordings from Camp VII. There are statements made by the
13 defendants in other situations. There might be the Combatant Status
14 Review Tribunal, although that's not clear. The government's
15 position on that is not a hundred percent clear. There
16 are -- there's the issue of the acquired phone calls.

17 There's -- you know, there's other evidence that is out
18 there and there are evidentiary bases to move to suppress it. That,
19 in my view, is the next major milestone.

20 There will be -- there are already pending discovery issues,
21 of course, and there would need to be some kind of compliance
22 deadline associated with that, but the major milestone for the
23 defense is filing evidentiary motions.

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1 Now, because they are evidentiary motions, the -- it will
2 take time to litigate if the military commission chooses to
3 have -- to allow witnesses or to hear oral argument on them, that
4 will take some time. So that, in my mind, is the next two. That's
5 the answer to your second question.

6 The answer to your first question, to go ahead and just nail
7 that before I make some other points that I'd like to make, is that
8 to us, 18 months from the completion of all LHM statement litigation
9 seems like a reasonable trial approach.

10 And the reason why we think that this is a good one, a good
11 approach, is that, number one, it's realistic, right? The procedural
12 posture is a law school exam nightmare for a poor criminal procedure
13 student who might try to trace the way that everything could go and
14 all the different things that could happen. It's like one of those
15 kitchen sink questions that we used to have to take.

16 But however we got here and whatever you think of it, it
17 involves uncertainty. There are elements of uncertainty and
18 unpredictability, which was counsel for Mr. Mohammad's point.

19 At the same time, government decisions about what to do
20 about the evidence obtained by torture drive what happens next after
21 that.

22 In your hypothetical, you said, well, imagine the situation
23 where the government chooses not to appeal. If the military

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1 commission issued a statement, and, again, hypothetical, issued a
2 ruling suppressing the three defendants' statements and the
3 government chose not to appeal and the CMCR ruled, then, in our view,
4 this clock would begin.

5 And so in my mind, the significance of that is it places the
6 onus for when we're going to get to trial where it belongs, which is
7 on the government. If they make decisions -- this is all driven by
8 their decision to use evidence obtained by torture in the first
9 place. But if they decide to, hey, you know, we have enough other
10 statements from Mr. Mohammad -- I'm not saying that that's true. But
11 if they were to say that, we don't need this, don't worry about it,
12 Judge, in the way that they chose not to use the statements obtained
13 prior to January 2007, then that would resolve the issue, the clock
14 would start.

15 If they said, you know what, the military commission has
16 ruled, we respect its ruling, we're not going to appeal, the clock
17 would start.

18 If the CMCR rules and they say, okay, we accept the CMCR
19 decision, as they did in the Nashiri case, we're not going to seek
20 further review, the clock would start.

21 So the completion of all LHM litigation is really a time,
22 what date D in my analysis is. What date D is really within the
23 government's control.

1 And so when the government says we deserve a trial date,
2 that is within their power by not continuing litigation to try to use
3 the statements that were obtained by torture.

4 So that, in our view, is what really should drive this
5 question. Because otherwise, there's a sort of temptation to posture
6 of we need a January 2027 trial date when government counsel itself
7 says, "Is that fanciful? Perhaps."

8 What is realistic is keying trial dates to the end of LHM
9 statement litigation.

10 MJ [LtCol SCHRAMA]: And I am tracking. And obviously, that
11 was the conversation I had with Colonel Bearden ----

12 LDC [MR. CONNELL]: Sure.

13 MJ [LtCol SCHRAMA]: ---- playing out different hypotheticals
14 and what-ifs.

15 LDC [MR. CONNELL]: That's right, sir. And if I could -- if I
16 could go to that question? The reason why the government could not
17 answer your first question of assuming that the military commission
18 ruled on the discover -- your motions by the end of the summer, what
19 would be a reasonable trial date, the reason why the government could
20 not answer that question is because there's too many uncertain
21 factors at this point, right?

22 We don't know if the CMCR will have ruled. We don't know if
23 the military commission will have ruled on the 630, et cetera,

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1 series. We don't know if the government would appeal.

2 Counsel for the government said that that was above his pay
3 grade, that he would have to have a conversation about it. All of
4 which is true, right? Those are elements of uncertainty. And the
5 reason why the government can't give you a reasonable trial date is
6 because there's too much uncertainty. And the proposal that I
7 have -- slowing down. Sorry, interpreters -- takes that uncertainty
8 into account.

9 If we could go back two, please. Back one more.

10 And I don't -- I skipped over this earlier, but I want to
11 return to it to just give a little -- some parameters to that
12 uncertainty because we do have two data points. One of those from
13 the al Nashiri case where the time from the suppression itself to the
14 ruling of the military commission to the CMCR ruling was about 17 and
15 a half months. And the time from the completion of briefing to the
16 CMCR ruling was 15 and a half months.

17 Now, there was no oral argument on that, so we don't have
18 that as a data point. But taking that and mapping it onto the
19 al Baluchi case, if the same 17 and a half months following
20 suppression was followed, that would be something like late September
21 of 2026.

22 And if we went by the briefing metric, plus 15.5 months,
23 that would be something like November. So, you know, I'm hopeful for

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1 the summer, but what good does that do us?

2 So I just wanted to put some framing around the military
3 commission's comment that, you know, when the -- if the government
4 appeals a suppression of someone else's statement, you know, that
5 puts us out there for another year, it actually puts us out there for
6 closer to another year and a half.

7 So did I adequately answer the military commission's
8 question -- two questions there? Because I'm happy to address them
9 in more detail.

10 MJ [LtCol SCHRAMA]: You did. Thank you.

11 LDC [MR. CONNELL]: Thank you.

12 And if we could move to the last slide.

13 No argument about trial preparation is complete without
14 acknowledging what has happened to support for the military
15 commissions by the convening authority over the last -- since the
16 beginning of 2025.

17 And I say the convening authority. I don't actually know
18 who our convening authority is. I saw the April 13th memo with a
19 cascading waterfall of convening authorities who might be the
20 convening authority.

21 I don't know if any of those people -- if, say, the Deputy
22 Secretary of Defense has delegated their authority or if that's been
23 delegated further down the chain. I don't actually know who our

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1 convening authority is. Maybe the military commission does. I
2 don't -- maybe the prosecution does. I don't know.

3 But we do know that General Escallier has been relieved
4 effective April 13th and that the power reverts to the Secretary of
5 Defense, who's delegated to the Deputy Secretary of Defense, which
6 might have -- who may have delegated it further. We don't know.

7 So I do want to talk about the convening authority because
8 their fundamental responsibility with respect to the defense
9 function, at least, is to man, train, and equip. And the train and
10 equip functions over the past 15 months have really collapsed. And I
11 have just a few observations that I'd like to make about that.

12 One of them, for example, is transportation to Naval Station
13 Guantanamo Bay. I put some material about this in the briefs.
14 Obviously, it's updated from then, but they have canceled at least
15 one quarter of the flights. And I actually did a little graphic to
16 illustrate that.

17 Your Honor, this is CUI, so it's not appropriate for display
18 to the gallery, but may I have the feed from the document camera?

19 MJ [LtCol SCHRAMA]: You may.

20 LDC [MR. CONNELL]: So this is the -- and I put a version of
21 this, but this is a updated version. And this is found in the record
22 at AE 989L. This is the flight schedule for about the last nine
23 months. And I have marked through with black marker all of the

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1 flights to or from Guantanamo that the convening authority has
2 canceled during that time.

3 Once we get to December of -- and during the first months of
4 that, from August to November of 2025, the -- there was the option to
5 take the rotator, the AMC rotator, and we could get down there that
6 way.

7 But then in December of 2025 -- and I'm now displaying
8 AE 989D Attachment E, which is not approved for display to the
9 gallery -- in -- on 9 December of 2025, the convening authority said
10 that the rotator would no longer be available to us, stating: Due to
11 current budget restraints and recent cuts, rotator requests will no
12 longer be approved absent exigent circumstances.

13 I think that was actually driven by my request to take the
14 rotator to attend my father's memorial service. He had died a year
15 ago. And the -- that's when this came out and then my request was
16 denied to take the rotator.

17 The -- so moving forward from December when we no longer
18 have the rotator available to us, the convening authority has
19 continued to cancel hearings -- excuse me, not cancel hearings, but
20 cancel flights.

21 We're going to come back and talk about -- this is the
22 January 2026. We're going to come back and talk about this
23 rescheduling that took place on 24 January to the 27th of January,

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1 and the convening authority has continued to cancel flight after
2 flight.

3 In the months since August of 2025, the military commission
4 has canceled 24 OMC flights to Guantanamo Bay, which we would
5 otherwise have used and planned accordingly.

6 One of those examples is this week we learned that the -- or
7 last week we learned that the military commission canceled the flight
8 on 30 May 2026 where we had a substantial number of people who are
9 planning to travel that week and -- in preparation for the June
10 hearing, but also to service client needs.

11 And I don't know what we're going to do -- right? -- because
12 we don't actually know which other June flights the convening
13 authority is going to cancel. The word they used was that they're
14 being "relooked." And what that relooking involves, I don't know.
15 We're now a month out, and it really makes it impossible to -- not
16 just to travel, but to plan for travel, and is really -- this is
17 unprecedented.

18 This started in -- over the last -- it really got bad this
19 summer. The -- it started about 15 months ago, and it has been a
20 complete sea change in the level of support that the convening
21 authority has given to Guantanamo Bay and travel to Guantanamo Bay.

22 The -- I do want to give an example of some of the follow-on
23 because everything around here is interconnected. I mean, I started

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1 with here's how the lack of public disclosure of these pleadings
2 intersects with the AE 055, intersects with the AE 978 about the NGOs
3 which is also a public trial motion. Everything around here is
4 interconnected.

5 And so the January 2026 -- January -- 24 January 2026
6 example is a great example because there are generally not visits
7 during Ramadan. Ramadan this year started on 17 February 2026. And
8 there was a pre-Ramadan flight on the 7th through the 14th of
9 February that we were planning to come down last time before Ramadan,
10 then there would be a month with no travel, and then we would come
11 back for the March hearing.

12 And the convening authority canceled the 7 through
13 14 February flight, and so that pushed everyone back to the
14 24 -- there was a flight the 17th through the 24th and one the 24th
15 through the 31st.

16 Because of weather, the flight on the 24th got rescheduled
17 to the 27th. What that meant was because there are not enough
18 lodging here at Guantanamo, that meant that on our team alone, two
19 civilians and two military were pushed into the Camp Justice old
20 housing, which has been acknowledged to be below DoD standards
21 is -- and ordinarily civilians could not be required to stay in it.

22 Now, these two civilians were kind enough to volunteer to
23 allow some other military to stay in our ordinary lodging. But it

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1 was a perfect example of how these things cascade off each other.

2 The other fascinating piece of that was that the convening
3 authority has changed its threshold for travel. It was, if there
4 weren't 20 travelers on an OMC flight, then they were going to cancel
5 it. They have changed that threshold to 40 travelers.

6 And when off hearings, when it's not hearings, almost all of
7 the travelers are from MCDO, because there's not that much call for
8 trial judiciary or court reporters. Occasionally there is, but
9 mostly it's MCDO.

10 And on that flight, on that time, the 24 through 31 January,
11 there were 54 people who were scheduled to travel from MCDO. And we
12 got the -- we got the e-mail from our leadership, which is in the
13 record at AE 989D Attachment F, saying 54 people was too many. We
14 didn't have enough lodging for all those people. And that was a
15 situation that only got aggravated when the flight was delayed.

16 The reason why that's so significant to me is that means, to
17 satisfy the convening authority, we're trying to hit a very narrow
18 window. It has to be at least 40 people but under 54 people.

19 And this approach to getting people to the island to prepare
20 for trial does not allow us to make the forward progress that we need
21 to make.

22 Now, I said equip and train were the two places that the
23 convening authority has abandoned its responsibilities. Training is

1 a perfect example. We put the documents in the -- in the brief in
2 989D, but 43 percent of the training requests that we made last year,
3 which were not unreasonable, were denied.

4 And I will tell you that time after time after time after
5 time, things that seemed like reasonable training requests, most
6 recently two different trainings relating to trauma, secondary
7 trauma, and working with people who have gone through trauma, which
8 includes conversations with victim family members, it includes
9 victims -- it includes the client and for secondary trauma, some
10 other team members, the -- all of that is denied time after time
11 after time.

12 And this was never the case. Two years ago, we would never
13 have had this conversation because reasonable training requests were
14 routinely granted.

15 Now, as I pointed out in the briefs, in 2023 and 2024, that
16 was because the decision as to what was a reasonable training request
17 was delegated to the chief defense counsel. The chief defense
18 counsel was given a budget for each of those years, and then it was
19 up to the chief defense counsel to allocate you, team, can have this
20 budget -- can do that travel or not do that travel. I will tell you
21 the way that it actually worked was they split it up between the
22 teams, assigned us you have X amount of money, you make your own
23 decisions as to how you want to spend it, and we acted accordingly.

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1 Since in the year 2025 and the year 2026, nobody -- zero
2 dollar budget has been given to MCDO for training. Every training
3 request has received extensive scrutiny from the convening authority,
4 which is fine, they can scrutinize whatever they want, but after that
5 many reasonable training requests have been denied.

6 Attorneys have CLE requirements. Strategies, laws, and
7 the -- and science changes. It gets updated over time. And skills
8 fade. I haven't actually had a trial since 2011, right -- the month
9 before I started this case. The -- you know, skills fade and that's
10 why training is important on an ongoing basis for any organization,
11 including MCDO.

12 And then finally, if I could have the feed from Table 4
13 again.

14 The third place in which the convening authority has really
15 abandoned its responsibilities to train and equip is with respect to
16 missions that are OCONUS.

17 Now, I want to point out in an ordinary capital case, of
18 which I have done many, the one thing that you could count on was
19 that your client had been to the United States for some period of
20 time. Because if the case was being prosecuted in Virginia or Texas,
21 then almost every time the crime had been committed in Virginia or
22 Texas.

23 Mr. al Baluchi's never been to the United States.

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1 The -- every bit of evidence that relates to the sentencing part of
2 the case is OCONUS. The -- a great deal of the evidence relating to
3 the government's witnesses and the defenses that Mr. al Baluchi
4 intends to present are OCONUS.

5 And up until February of 2025, reasonable requests for
6 OCONUS travel were routinely granted. That doesn't mean that every
7 single one was granted. It doesn't mean it was always granted in the
8 form in which we request it. Sometimes we would have to take a
9 different number of people or take a different routing or something
10 else than might have been our first preference, but it was always
11 negotiated out.

12 Everything has changed since February of 2025. And in this
13 slide -- and in the ex parte I'll give you a more detailed version of
14 this slide -- but in this slide, it illustrates that since February
15 of 2025, eight of the 12 OCONUS missions that we have requested have
16 been either denied or initially granted and then canceled, which has
17 happened on a couple of occasions.

18 The -- this is the trial preparation that the government is
19 talking about. When they say everybody needs to get ready for trial,
20 this is what it means for us. What it means for us is to go to where
21 the witnesses are, to go to where the evidence is, to do the
22 investigation which is necessary, to -- and find some way to get that
23 witness testimony or that evidence into evidence before an -- in an

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1 initial -- excuse me -- in an eventual trial before the military
2 commission.

3 So the reason why I say these things is it is one thing to
4 say it is -- we should have a trial date and that we need to prepare
5 for trial. But if simultaneously the convening authority is taking
6 away the tools which are necessary to prepare for that trial, then
7 whatever trial date we set is a foregone hope.

8 MJ [LtCol SCHRAMA]: So, Mr. Connell, when you presented on
9 slide, I believe it was 3, your kind of 18-month proposal date of the
10 LHM finality and then plus the various dates ----

11 LDC [MR. CONNELL]: Yes.

12 MJ [LtCol SCHRAMA]: ---- are those dates contingent, then, on
13 the ability to be able to get flights CONUS, OCONUS, and training?
14 Is that ----

15 LDC [MR. CONNELL]: Yes, sir. I mean, there has to be -- I
16 didn't mean to interrupt.

17 MJ [LtCol SCHRAMA]: No. I think you're answering the
18 question. But that timeline is based on pre-2025 conditions?

19 LDC [MR. CONNELL]: It's based on a reasonable support for
20 defense preparation. And, you know, this is not a situation
21 of we -- I think we should get everything we ever ask for. That's
22 not defense world, right? That's not the way that it works.

23 But up until 2025, there was a reasonable support for

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1 training requests, for payment of DTS. We haven't even talked about
2 how much -- how taxis and Ubers are being disallowed. You know, the
3 level of -- I don't want to use the word "scrutiny" because scrutiny
4 is appropriate.

5 The level of denial that is being applied to OCONUS as well
6 as CONUS travel is really a new thing that is beyond -- that really
7 affects our ability to prepare.

8 So to answer the question, yes, this presumes a reasonable
9 level of support for training and equipment from the convening
10 authority.

11 MJ [LtCol SCHRAMA]: Thank you.

12 LDC [MR. ENGLE]: I think I'll be up next, Your Honor. I
13 thought you said prayer was 1615 today. So I don't know if you want
14 to press. I'm ready to go, but I'll do as you direct.

15 MJ [LtCol SCHRAMA]: We will press. The way I understand it
16 is we can slightly drift to the right of prayer time. So the plan
17 each day is to go to about 1730. So yes, please.

18 LDC [MR. ENGLE]: And before I get started, I need to approach
19 to get an in-court submission marked.

20 MJ [LtCol SCHRAMA]: You may.

21 LDC [MR. ENGLE]: Please. Thank you.

22 **[Pause.]**

23 **[The military judge conferred with courtroom personnel.]**

1 LDC [MR. ENGLE]: Thank you, Your Honor.

2 And you've already heard a lot, and I'm going to try not to
3 repeat what has already been said. I have what I think are about
4 five points that I want to add to what has been said so far.

5 MJ [LtCol SCHRAMA]: **[Microphone button not pushed; no audio.]**

6 LDC [MR. RUIZ]: Your Honor, could you press the button,
7 please? Thank you.

8 MJ [LtCol SCHRAMA]: I can. I'm going to repeat that.

9 I think I understand the history. I think I understand the
10 current posture. If you have extra insight to it, by all means. But
11 otherwise, whatever substantive points you have would probably be
12 more helpful for me at this point.

13 LDC [MR. ENGLE]: Yes, Your Honor. And what I'm going to try
14 to do is give you a few WBA-specific examples of what you've been
15 hearing about.

16 MJ [LtCol SCHRAMA]: Perfect.

17 LDC [MR. ENGLE]: And I'm thinking this shouldn't take longer
18 than 20 to 30 minutes, so I don't have a long presentation.

19 The first point I want to make or the first thing I'd like
20 to do is take ownership of the phrase "fanciful" as it pertains to
21 the January 11th, 2027 trial date. That was -- that was our pleading
22 that said that, and I stand by that characterization.

23 And, in fact, although it seems to have ruffled some

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1 feathers on the other side of the aisle when I used it, when you
2 asked Colonel Bearden a single question during his oral argument,
3 which I will paraphrase as what is a realistic trial date if I rule
4 on these discovery motions, he said, "We're asking for January 11th,
5 2027. Is that fanciful? Perhaps."

6 And the reality is everybody in this room knows we're not
7 going to be ready for trial in January of 2027. Everybody knows
8 that. That is just the reality of where we are today.

9 The point I want to add to that is that it does harm to set
10 unrealistic trial dates that nobody knows are actually going to
11 happen. It sets expectations.

12 There are a lot of people. And when, you know, victim
13 family members are here on island, I meet with them whenever I can.
14 Other members of the defense meet with them to talk to them.

15 And these are people who desperately want to see trial
16 dates. Colonel Bearden is right about that. And when we set dates
17 that are unrealistic, we create false impressions and false hope in
18 the public. And then when those things don't come to fruition, it
19 creates further cynicism and, further, a lack of confidence in the
20 military commissions process.

21 So just setting a date that we know isn't going to happen, I
22 think, is a really bad idea. And I encourage the court not to do
23 that.

1 And I'll talk a little bit about some of -- to Your Honor's
2 questions about what really is realistic, at least in our view.

3 The other thing that Colonel Bearden talked about was
4 Judge Pohl saying that the prosecution deserved to have a trial date.
5 And I wasn't here for that.

6 But I do know that Judge Pohl did something else as well,
7 which is that he threw out the LHM statements. He looked at the
8 restrictions of Protective Order #4, which he granted and entered,
9 and he said, "This is not going to allow the defense to present an
10 adequate defense. These restrictions are too onerous. It will
11 prevent a fair adjudication of the suppression issue. And
12 accordingly, I am throwing out the LHM statements."

13 And it was the government at that point -- had they accepted
14 that ruling, we could be seven years ahead in this litigation. But
15 instead, what the government did was they waited until
16 Judge Parrella, the subsequent judge, came along and they moved to
17 reconsider that ruling.

18 And they asked this commission to give us a chance to prove
19 our case. Let us put on our evidence. Let us show you, then, this
20 can be done. And that is the endeavor that we have been undertaking
21 from 2019 until today in 2026.

22 And Judge Pohl saw that this was what was going to happen.
23 He predicted that this is what was going to happen. And he

1 did -- and he took the action that needed to be taken by suppressing
2 the LHMs.

3 But the government has made a series of decisions since that
4 date that have caused us to be where we are today, which sometimes
5 feels like stuck in the mud for sure. I feel that, too, sometimes.
6 But that's just the reality of where we are.

7 One of the things that I really feel requires a response is
8 Colonel Bearden's assertion that the government understands and is
9 fulfilling its discovery obligations, and this is something we hear
10 time and time again from behind this podium. We see it over and over
11 and over in government pleadings. I think they have a macro on their
12 computers to just insert the paragraph that says, "We understand our
13 obligations." But they don't understand their discovery obligations.
14 And I want to give you -- or at least they're not fulfilling them.
15 And I want to give you two examples of that.

16 One of the central issues for Mr. Bin'Attash's defense is
17 something called Skipper evidence. I don't know if you're familiar
18 with that term, but Skipper is a United States Supreme Court that
19 essentially says -- I sense a light coming, so I'm going to slow down
20 a little bit -- that essentially says one constitutional area of
21 mitigation is a defendant's adjustment to incarceration. How do they
22 do in prison? Do they act out and have -- you know, engage in
23 violent conduct? Do they demonstrate maturity and growth? How do

1 they adjust? So on and so forth.

2 And this is something that the United States Supreme Court
3 has said you are constitutionally entitled to present in a capital
4 case.

5 How do we develop that evidence? We talk to guards. We
6 talk to the people who see our clients, who interact with them on a
7 day-to-day basis and are in a position to give us information about
8 their behavior.

9 And this is -- you're going to hear more about this in our
10 ex parte presentation next week. We'll get a little more specific in
11 that. But what I will tell you is that this is an extremely
12 important area of mitigation for Mr. Bin'Attash.

13 In every other capital case that I've done over the course
14 of my career, we do these interviews in a real easy way. I e-mail
15 the warden of the prison or the superintendent of the jail where my
16 client has been incarcerated and I say I want to do these interviews,
17 and they say pick a day, come on in, and I sit in a room and the
18 guards come in and they talk to me.

19 That's how I've done it. Other people do it different ways,
20 but that's what has always worked for me, and that's what I've done.

21 We cannot do that in this case because of the protective
22 orders that are in place and because we are not allowed for, you
23 know, national security reasons, classification reasons, we are not

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1 allowed to contact guards directly. So we have to go through the
2 government. We have to ask the government to assign a unique
3 identifier to a guard, and then we have to reach out to them through
4 the process laid out in -- I think that one is Protective Order #6.
5 Yes. Nailed it.

6 So what have we done? Three years ago, in 2023, we
7 submitted a list, I think, of 109 or so requested UGIs. And the
8 government gave us, I think, 20-some of those. Only those where we
9 were, through independent investigation, able to provide true names
10 to the government. In other words, we were able to go online and
11 figure out who had been down here. People post about these
12 things -- right? -- they put it on their LinkedIn, they put it in
13 various places.

14 So we were able to say here are a couple dozen people whose
15 true names we know who are working with our clients down in
16 Guantanamo. They gave us those names.

17 But they denied all of the other names that were on
18 those -- that we requested. And those were names that we had, you
19 know, pulled out of DIMS. We would pull descriptions. We would have
20 call signs or badge numbers and those sorts of things, and we would
21 say we need those people.

22 The government responded to that and they said here's the
23 ones with the true names. Now, mind you, true names are not people

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1 who we know interacted with Mr. Bin'Attash. Those are just names
2 that we know happened to be at Guantanamo, right?

3 Because unless they posted something about Mr. Bin'Attash,
4 which none of them did, we would have no way of knowing that. But
5 with the others, with the call signs, with the SOO numbers, they call
6 them, those sorts of things, we can actually point to documents that
7 show that these individuals interacted with Mr. Bin'Attash here in
8 Guantanamo.

9 The government denied the balance of those and said we're
10 not going to provide any of those to you unless you can make a more
11 particularized showing of need.

12 So what did we do? July 12th, 2023, almost three years ago,
13 we submitted a list of 40 of those call signs, badge numbers, guards,
14 and we asked the government to assign them unique identifiers so that
15 we could conduct the Skipper investigation.

16 And not only that, but we pointed out specifically in the
17 discovery request here's how we know this person has relevant
18 information. Here are the DIMS which are the little entries that
19 they make when they interact in their system Detainee Information
20 Management System, I think it stands for. You know, here's the page
21 where we see that this person has relevant information and so please
22 assign them a UGI so that we can go about our investigation.

23 Crickets. Nothing.

1 On 8 May 2024, so almost a year later, we submitted an
2 additional 22. And, again, we identified them with particularity.
3 We explained why they were relevant. We explained -- we're not
4 trying to hide anything here. We explained why we knew they were
5 relevant.

6 One of them, in fact, was a guard who had approached us and
7 indicated that he wanted to talk to us. But, of course, we can't
8 engage in that because of the protective order. So we had to tell
9 him, hold on, slow down. You know, before we can talk to you, we
10 have to go to the government and get them to assign you an
11 identifier. So 8 May 2024, we requested another 22. So that's 62
12 names that we've requested and given specific information on why we
13 need to talk to these people.

14 In over two years -- well, from the last request we're
15 coming up on two years on May 8th, the government has failed to
16 fulfill that request or even to respond to it. The last time we
17 checked in with them was Mr. Perry here in January of this year
18 e-mailed to say, "What's going on? Any update?" And the response we
19 got is: "We're working it."

20 Well, when Your Honor asks when can you be ready for
21 trial -- okay? -- getting those UGIs is the first step towards us
22 getting ready for trial. That's what enables us to start doing our
23 investigation, to go to the relevant witnesses and collect the

1 evidence that we need to collect.

2 And if the government is going to sit on these requests for
3 two or three years -- slowing down -- then they can't come in here
4 and demand that we need to be ready for trial on some certain date
5 because they are not holding up their end of the bargain. They are
6 not putting us in a position to competently represent Mr. Bin'Attash
7 and to be ready for trial.

8 So that's discovery issue number one.

9 Discovery issue number two ----

10 MJ [LtCol SCHRAMA]: Mr. Engle, question with that. As I'm
11 contemplating whether a trial date is sufficient and if so, when that
12 date should be, this sounds like discovery related to sentencing. Am
13 I correct? How should I compartmentalize, then, the discovery issues
14 that we need to reconcile for trial versus discovery issues that
15 would need to be reconciled for sentencing? Or are they the same
16 thing? I mean, that's my question for you.

17 LDC [MR. ENGLE]: They're the same thing. I mean, I presume
18 that we're going to roll right from trial into sentencing. Maybe I'm
19 wrong about that. That's how it's worked in every other capital case
20 I've ever done.

21 So the work that we need to do to prepare for trial is the
22 work we need to do to prepare for sentencing. I mean, sentencing is
23 often the ball game in capital cases. And it's extremely time

1 consuming.

2 But no, I don't think, to answer your question directly,
3 Your Honor, I don't think you should distinguish between those at
4 all. We need this information well in advance of trial so that we
5 can devote time and the resources that we need to devote to
6 developing this evidence and present a competent mitigation case on
7 behalf of Mr. Bin'Attash.

8 So, again, I think that is a crystal clear example of the
9 government not understanding its discovery obligations, particularly
10 within the context of these protective orders that they have imposed
11 upon us.

12 I would like to put on the document camera my in-court
13 submission which has been labeled AE 989M. This is CUI. It has not
14 been cleared with the CISO, so it cannot be displayed to the gallery,
15 but only to the commission and to the parties.

16 MJ [LtCol SCHRAMA]: You may proceed.

17 LDC [MR. ENGLE]: Agent Robert McFadden may be a name that's
18 familiar to Your Honor. He is one of the debriefers who conducted
19 Mr. Bin'Attash's LHM debriefings, along with Special Agent Gaudin who
20 we heard from at the last session.

21 Special Agent McFadden is employed by NCIS, which I am a
22 little embarrassed to say I don't know what that stands for. I think
23 it's the Naval Criminal Investigation Service or something along

1 those lines. That's where he spent his career and in that capacity
2 he was an expert on the USS COLE investigation, which is the case in
3 which Mr. al Nashiri is charged in an ongoing commission. And it's a
4 case in which my client, Mr. Bin'Attash, has been described
5 repeatedly as an unindicted co-conspirator in that case and there's
6 been a lot of hoopla about that.

7 Special Agent McFadden testified before this commission, I
8 believe it was in May of 2024. So, again, coming up on two years
9 ago. And this is part of the direct examination. This is one of
10 those situations, Your Honor, where the government presented direct
11 testimony but our cross-examination got deferred, so we have never
12 cross-examined Special Agent McFadden.

13 And I actually represented to you, I don't know if this was
14 in a pleading or orally recently, that we didn't have the same type
15 of discovery issues with respect to Special Agent McFadden that we
16 did with Special Agent Gaudin, that I wasn't tracking that there was
17 outstanding discovery that we were needing before we could
18 cross-examine Special Agent McFadden. And I retract that statement.

19 So during Special Agent McFadden's direct examination,
20 Mr. Trivett asked him: "Do you recall having access to intelligence
21 reporting from the CIA black sites prior to your interview with
22 Khallad Bin'Attash?"

23 "Yes, sir."

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1 "And do you recall reviewing any?"

2 Answer: "I do not recall reviewing any of the actual
3 production intelligence or the operational intelligence for Khallad
4 Bin'Attash. I cannot recall reading anything from the CIA prior to
5 the interview."

6 So that was testimony that the government elicited on direct
7 examination, that Special Agent McFadden could not recall looking at
8 any CIA intelligence.

9 Well, lo and behold, last week, on April 30th, Team Nashiri
10 sent me the cable which has gone through a declassification process
11 that was produced to them in 2022 or 2023, they're trying to run down
12 the exact date for me, but it was after Special Agent McFadden had
13 testified in their commission.

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22 That is my client.

23 So Agent McFadden's own agency -- and he was the lead case

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1 agent, according to his testimony, for the COLE investigation in

2 NCIS -- [REDACTED]

3 [REDACTED]

4 [REDACTED] And yet somehow, this cable is not being provided to me when
5 Special Agent McFadden testifies.

6 It goes on and says: [REDACTED]

7 [REDACTED] -- slowing down because I'm reading --
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 And much of the rest of the document, Your Honor, you'll see
12 is heavily redacted because it has gone through the declassification
13 process. So I don't know what it says under there, but what it
14 clearly is is a list of questions that NCIS is sending into the black
15 sites to ask my client.

16 So when we talk about information loops, when we talk about
17 what knowledge the LHM agents had when they were talking to
18 Mr. Bin'Attash, we need this information. This is exculpatory
19 information.

20 And if the government understood its discovery obligations,
21 I would not be getting this from another defense team in another
22 commission. I would be getting this in discovery, but I didn't.

23 So when they get up here and tell Your Honor we get it, we

1 understand, we're complying, we're done with discovery, it's not
2 true. And what we have to do is comb through things like this and
3 it's -- and pull teeth constantly with motions to compel, with
4 discovery requests.

5 I haven't had time to submit a DR on this yet, but we're
6 working on it. We're going to get in it as soon as possible.

7 This should have been provided years ago. And it's
8 frustrating that -- it's frustrating to sit there and hear the
9 government assert that it's fulfilling its discovery obligations
10 while I'm getting things like this in my inbox.

11 I'm finished with the document camera.

12 There's been a lot of talk already about the PTAs, so I'm
13 not going to dwell on that, except to make one point that I don't
14 think has been made yet. And that is when we spent the better part
15 of two years hammering out pretrial agreements in this case, one of
16 the things we specifically negotiated was a timeline for sentencing.
17 And one of the things that we were very candid and up front with the
18 government about is that we are -- we need time to finish putting our
19 mitigation case together. And we built that time into the PTAs.

20 And what they say is that once the pleas are entered,
21 sentencing for Mr. Bin'Attash would not happen sooner than 20 months
22 after the commission accepted his plea pursuant to those PTAs.

23 So that was a timeline that we negotiated between the

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1 parties that they understood or accepted at the end of the day as a
2 reasonable amount of time that we were going to need to get ready for
3 sentencing.

4 And bear in mind, please, that this is not a death penalty
5 sentencing that we are talking about. We're talking about a
6 noncapital sentencing that doesn't have a death-qualified jury, where
7 the death penalty is off the table, in a context in which we have
8 agreed to seek no further discovery. That was a term of the plea
9 agreement.

10 We have agreed to waive all waivable motions. So there's
11 not going to be any more coming to the commission with motions. And
12 that all of the government's evidence, the entire list that they
13 produced of aggravating and sentencing evidence that they wanted to
14 put on, was stipulated to. We weren't going to object to any of it.
15 We were going to agree that it could come in.

16 And in that context of agreement and ease and simplicity, 20
17 months was a reasonable estimate of what it would take for
18 Mr. Bin'Attash to be ready -- for our team to be ready for that
19 sentencing hearing.

20 Well, where are we today? We are -- today we are much
21 further away than we were when that -- those PTAs were in effect.
22 And why is that? Because, as Your Honor has pointed out, there are
23 almost 100 motions that need to be resolved currently pending. There

1 are more coming in the pike. I just showed you an example of one
2 that I guarantee is going to be coming across your desk in the near
3 future. We've made zero progress on 524 issues or our abilities to
4 present our rebuttal case.

5 And I really appreciated the slide that Mr. Connell put up
6 there about OCONUS travel, because, you know, that -- and I don't
7 want to just repeat him, but that's where our evidence is when it
8 comes to mitigation. It's not in the United States.

9 For us, we have to go to Saudi Arabia. And we can't go to
10 Saudi Arabia. Not only because the convening authority has been
11 pinching pennies for the last 18 months, but also because there's a
12 war going on in the region and nobody lets us go to Saudi Arabia
13 under these circumstances. So we are completely stymied in our
14 ability to develop that mitigating evidence right now.

15 And, you know, if Your Honor wants to know when is that
16 going to change, you know, I wish I knew. I don't know when we're
17 going to get approval to do the things we need to do. But I know
18 what I need to do and I want to do it.

19 And the last point I wanted to make -- and this is in
20 response to a question that you asked Mr. Connell about, you know,
21 what are the big issues that are remaining out there. I'd like to
22 call two motion series to your attention. They are 809 and they are
23 697. And I can't get into a great deal of detail in an open setting

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1 about those motions.

2 MJ [LtCol SCHRAMA]: 809 and?

3 LDC [MR. ENGLE]: 697.

4 MJ [LtCol SCHRAMA]: Thank you.

5 LDC [MR. ENGLE]: Yes, Your Honor.

6 But what I will say is that both of those motions were fully
7 briefed and argued to this commission years ago, prior to the PTAs.
8 I don't know if it was 2023 or 2024, a long time ago.

9 And they are both about producing, again, identifiers
10 for -- had different categories of witnesses. And in this case, the
11 categories of witnesses are people who were in the black sites, which
12 would fall under Protective Order #4, who we can establish had direct
13 and substantial contact with Mr. Bin'Attash. That's 809.

14 And 697 is about the guards who worked on Guantanamo during
15 the time period 2006 to 2008, the time period of the LHM
16 investigation. So these are both incredibly critical time periods.

17 And, again, this is one of those situations where until the
18 commission resolves those -- right? -- once the commission resolves
19 those -- and maybe the commission will deny them. Frankly, I'd be
20 shocked if that happened. These are not -- these are -- these
21 are -- these are -- these are clear winners, in my opinion.

22 But getting those -- having that motion granted and
23 compelling the government to produce identifiers for those people,

1 that's step one. We haven't even got to step one in that process.

2 So those are two that I think, you know, Your Honor,
3 those -- if you want to know what -- like, what the big weighty ones
4 are out there? I'm not saying there aren't a lot of others. For us,
5 those are two critical ones that, you know, we need that information
6 in order to move this case forward.

7 And so I just wanted to present those to you in response to
8 your question.

9 MJ [LtCol SCHRAMA]: Yeah, thank you, Mr. Engle. And I
10 know -- I believe 809 and 697 are both on the list that government
11 and defense counsel provided of motions before the court that at
12 least gave a status update of whether they are resolved or not, and
13 I'm digging into those now.

14 And I also believe the Skipper issue, for lack of a better
15 word, I believe that's AE 703, which is also one of the issues that
16 is pending before the court.

17 LDC [MR. ENGLE]: Yeah. I'll take your word for that. I'm
18 not conversant enough in the numbers to be able to confirm that, but
19 I'll take your word for that.

20 So my final point is that -- and this echoes what's already
21 been said to Your Honor. It's premature to set a trial date, both
22 for all of the reasons I just discussed and the uncertainties about
23 how long it's going to take to drag any of this information out of

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1 the government and to get permission to go do the investigation we
2 need to do, but also because -- as Mr. Connell ably illustrated,
3 because the resolution of the LHMs is so essential.

4 You know, there are basically three paths forward here. One
5 is that you're going to find that the government has met its burden
6 at this stage. And then we're going to move on to phase two. And
7 what the government has said about phase two, which is our rebuttal
8 case, is that it's going to be a long process. They've been pretty
9 candid about that. We're going to look for every opportunity to
10 explore summaries and substitutions and alternative forms of
11 evidence, and that's going to take time, and we have to talk to
12 equity partners.

13 So, you know, that's going to be a process. So that's
14 one -- one path that's certainly not going to put us in a position to
15 have a 2027 trial date.

16 The other is that Your Honor may find that the government
17 has failed to meet its burden at this stage and suppress the
18 statements, and then the government appeals. And if that happens,
19 then, as Mr. Connell also illustrated, we're likely in a stay posture
20 for somewhere in the neighborhood of 12 to 18 months while the
21 appellate process plays out. And nothing substantial is going to
22 happen during that time because this commission will not have
23 jurisdiction over these matters.

1 The third possibility is that Your Honor finds that the
2 government has not met their burden and suppresses the LHM and they
3 don't appeal. And I would submit that, in accord with what
4 Mr. Connell said about all of the uncertainties, you know, that's the
5 only possibility of even discussing a trial date in 2027 at all, let
6 alone early 2027.

7 And, frankly, I still think that -- I would still put that
8 in the category of fanciful given the number of serious, weighty,
9 substantial issues that need to be resolved and the government
10 continuing to drag its heels on fulfilling its discovery obligations
11 and not enabling us to do our jobs of representing Mr. Bin'Attash
12 effectively.

13 So that is what I have to say, Your Honor, unless you have
14 questions.

15 MJ [LtCol SCHRAMA]: No, Mr. Engle. Thank you.

16 LDC [MR. ENGLE]: Thank you. I'm -- Mr. Bin'Attash is
17 requesting that we break for prayer time now, if we can do that.

18 I think you are right that I think there is some wiggle
19 room, but I think we may be up against the outer boundary of that. I
20 can check with him if you like.

21 MJ [LtCol SCHRAMA]: I'll ask counsel to educate me. My
22 research indicated to me that we could press to on most
23 days -- because I know this is the longer prayer time -- that we

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1 could go to 1730 and not impede that prayer time.

2 LDC [MR. ENGLE]: And I defer to more learned counsel on this
3 particular issue than myself.

4 MJ [LtCol SCHRAMA]: Yeah, I'll ask Mr. Sowards.

5 Mr. Sowards, I'll ask you. I mean, obviously the court's
6 preference would be to hear from Mr. Ruiz today and let
7 Mr. Bearden -- excuse me -- Colonel Bearden weigh in since he carries
8 the burden, but I also don't want to infringe upon their prayer time.

9 LDC [MR. SOWARDS]: I'm being advised, Your Honor, that prayer
10 can be accomplished in 15 minutes, but going out until 1730
11 would -- at least in Mr. Mohammad's practice, is not acceptable.

12 MJ [LtCol SCHRAMA]: Okay. So what we'll do is -- so if we
13 break now, can -- Mr. Sowards, if we came back at 1700, would that be
14 sufficient?

15 Okay. Makes sense. We probably need to take a comfort
16 break anyway. And then that way, if we need to go past the 1730 a
17 little bit to finish up today, we'll go ahead and do that.

18 Okay. Court's in recess.

19 **[The R.M.C. 803 session recessed at 1643, 04 May 2026.]**

20 **[The R.M.C. 803 session was called to order at 1707, 04 May 2026.]**

21 MJ [LtCol SCHRAMA]: This commission is called to order.

22 All parties previously present are again present.

23 Mr. Ruiz, are you prepared to proceed with argument?

1 LDC [MR. RUIZ]: I am prepared, Judge.

2 MJ [LtCol SCHRAMA]: You may proceed.

3 LDC [MR. RUIZ]: And I'm going to endeavor to not overlap too
4 much, but it is a challenge.

5 I will start off, I think, with a category of -- that I
6 think you were getting at with one of your questions, which had to do
7 with expected litigation, just to give you some sense of that.

8 From our perspective, you've issued rulings on three AEs
9 that were essentially -- where you made the distinction between a
10 compliance issue and a dispute issue. Those are AE 330, AE 419, and
11 AE 568. And I would just inform the commission that you can expect
12 to see some motions in regards to each of those -- those rulings.
13 So, in essence, there will be added litigation, even though you've
14 ruled on at least that portion of the issue. So I would add that.

15 I know there's a number of still pending motions for ruling.
16 I'm not going to go through all of those because I think you have
17 notes from all the parties when we submitted those rulings. But
18 those certainly are amongst the ones I think that you've mentioned
19 that still need to be addressed.

20 There are two additional ones that I want to highlight in
21 particular for you, because as you look at the way ahead in terms of
22 the practicality of having a trial schedule, these are two that we
23 would like to highlight and I think you should consider.

1 These are AE 688 and AE 729, both (MAH) motions. AE 688 was
2 filed on 20 December 2019. AE 729 was filed on 6 February 2020. So
3 roughly six years ago, seven years ago we filed these motions.

4 AE 729 we argued in 2023. November 2023, it was fully
5 argued by the parties. And AE 688 was fully argued in February of
6 2024.

7 Now, rulings attacking those motions and ruling on those
8 motions could potentially, if it went in our favor, be dispositive of
9 some of the issues before the commission. So I would urge the
10 commission to please add those to your queue, for lack of a better
11 term, and to address those at the earliest opportunity as they could
12 obviate the need to even set a trial date if, in fact, the relief
13 we've requested is granted, which we think in both instances we have
14 a very good case and argued a very good case for each of those
15 motions.

16 With respect to the arguments that have been made today,
17 they have been very, I think, thorough and highlighted many of the
18 points that we wanted to make to the commission, but I do want to
19 make some observations about some of the arguments that have been
20 made. They're pretty short and to the point.

21 With respect to the CIA/FBI issue that has been related to
22 you a number of times, we think one important point that hasn't
23 really been fleshed out is that the government didn't volunteer this

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1 information. And this is an important point because later we're
2 going to talk about the meaning of "deserve," right?

3 Colonel Bearden opened up his argument by saying the
4 government deserves a trial date and that Judge Pohl had talked about
5 deserving a trial date. The government's conduct, we think,
6 definitely should impact the definition or the adherence to any type
7 of deserving.

8 So in 2017, I cross-examined an FBI agent. It was in
9 December of 2017. And it was during that cross-examination that for
10 the first time we saw the peak of that iceberg of the CIA/FBI
11 connection. It didn't come easy. It was extracted from the witness,
12 and it led to eventually a lot more discovery in this case. But of
13 course, as a number of my colleagues have talked about, that was in
14 2017 in December.

15 In June of 2008, June 4th, to be precise, of 2008, the
16 managing trial counsel, same managing trial counsel for the
17 prosecution now, stood before a different commission and asked for a
18 trial date of September 15, 2008, and made representations to the
19 commission about discovery, made representations to the commission
20 about the way forward. Fast-forward to that time, and I think that
21 speaks for itself.

22 In terms of the flights, I think Mr. Connell did a very good
23 job of illustrating for you the problem with the transportation

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1 there. The only thing I want to add to that is that there was a time
2 in military commissions where we had weekly flights to Guantanamo.
3 Not only did we have commission flights, but we also had the rotator
4 flights. In addition to rotator flights, we also had the opportunity
5 to take island flights. There used to be an airline on this island
6 that flew through Jamaica and then Fort Lauderdale where we were also
7 able to acquire transportation if need be.

8 Throughout my time here, the convening authority have scaled
9 those back. The commercial airline is no longer present on this
10 island. And when the convening authority made the decision to cut
11 back on the weekly commission flights, the pushback from our office
12 was met with the response that commission flights would no longer be
13 necessary on a weekly basis because the rotator flights would be
14 liberally granted and would be liberally available to counsel so that
15 there would be no disruption in our mission and in our ability to get
16 to this island and our people to get to this island and do the work
17 that we needed to do.

18 So I think it's interesting and important for you to
19 understand that progression or that regression, I should say, in the
20 way that the convening authority has approached support of this
21 mission.

22 And as you think of the way forward in terms of fashioning a
23 realistic trial date, there has to be some accountability from the

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1 convening authority, and that's one of the points that I'm going to
2 suggest as we move along. But I thought it was important for you to
3 have at least that historical fact.

4 With respect to prejudice, Colonel Bearden talked about
5 prejudice. And certainly I will tell you that we feel that
6 Mr. Hawsawi has been highly, highly prejudiced by the government's
7 conduct and by our inability to get to a trial date. And I'm going
8 to talk a little bit more about that.

9 In 989E (MAH), which is an ex parte submission, that's 989E
10 (MAH), we outlined for you, Judge, the impact of two things,
11 essentially: The impact of the government's reneging on the plea
12 agreements in this case, the impact that it's had on our team and the
13 supporting experts for our team. And we highlight the impact that it
14 has had just on the overall operations for our team. So that's 989E
15 (MAH).

16 What that relates, without getting into the specificity of
17 each of the specialties that we highlighted, is that we've had
18 longtime experts pass away from terminal illness. We had one
19 longtime expert with a tremendous amount of historical knowledge of
20 Mr. al Hawsawi's case pass away from a terminal illness.

21 Presently there is another expert who is dealing with a very
22 serious potentially terminal illness as well. We've had experts that
23 have retired, and we've had experts that have simply resigned just

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1 because of the indeterminate nature.

2 So from our perspective, we have not looked at not setting a
3 trial date as a positive thing. And when I say "we," I'm talking
4 about Mr. al Hawsawi's defense team.

5 In fact, the record is replete with requests and motions
6 from our team to sever Mr. al Hawsawi from the other defendants.
7 Over the course of the years, one of the litigation strategies that
8 we pursued zealously was to have Mr. al Hawsawi's case severed so
9 that he could indeed have individualized justice and so that we could
10 move the case further along to a just resolution.

11 Because not having a resolution doesn't just impact the
12 prosecution, doesn't just impact people who have lost and suffered
13 because of the lives that have been lost. It also impacts the people
14 who are involved in the case who can also look forward to closure.

15 And we've always been confident in the facts of
16 Mr. al Hawsawi's case. We've always been confident in the resolution
17 that we could obtain in Mr. al Hawsawi's case, were we to get a level
18 or a playing field and get to an actual fact-finder.

19 And because of that, for years and years and years, we
20 pursued a strategy of seeking to sever this case, a strategy that at
21 every turn was opposed by the prosecution. They simply did not want
22 to sever the case and move that one case along.

23 That history can be found in AE 299, which was first filed

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1 in 21 May of 2014. In AE 299 (Sup), we also filed -- that was 3 June
2 of 2014. We followed up again on our request for a severance. In
3 AE 299 (2nd Sup), 19 June 2014, we once again raised the issue of
4 severance.

5 AE 299 (3rd Sup), 29 September 2015, we again said to the
6 government: Sever us. Let's move forward without all of these other
7 things that are impacting our ability to move forward. Get this case
8 to a trial and a resolution and a closure and let's have the facts.
9 Let's hear them out, let's bear them out. We're not afraid. Why
10 don't you sever this case and let's get to the fact-finder.

11 Again, they were unwilling to do it. Fought us at every
12 turn.

13 AE 299 (4th Sup), 12 August 2016. Once again, we were
14 before the commission. Once again, we were requesting the same
15 remedy.

16 17 February 2020, once again, we asked the commission, we
17 asked the prosecution to sever this case.

18 So to Colonel Bearden, who I think can be forgiven because
19 he's only been here a couple of years while we've been here 17 years
20 fighting this case, we have not shied away from a trial date. They
21 have. We've asked them to sever Mr. al Hawsawi's case over the
22 course of years and move this case along.

23 So when he says no trial counsel, no defense counsel will

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1 agree to a trial date, he is mistaken, because he obviously has not
2 reviewed the history of this case. And it's not been a history of
3 shying away from meeting the fact-finder. It is the government who
4 has at every turn skirted the opportunity to sever this case and move
5 it along independently.

6 In terms of deserves, Judge -- well, what the law requires
7 is due process and heightened reliability in the resolution of a
8 capital case. Mr. al Hawsawi and the other men accused in this case
9 deserve that.

10 The prosecution doesn't deserve a trial date. The
11 prosecution earns that right to have a trial date.

12 And I know Colonel Bearden likes to talk about his years in
13 federal court. Well, I, too, have been in federal court from time to
14 time as a federal defender, and I know those same federal judges.
15 And those federal judges don't just hand out trial dates. They
16 require the prosecution to earn those trial dates. They require them
17 to earn them by their conduct, by their transparency, by the manner
18 in which they conduct discovery, and by the manner in which they deal
19 with the defendant fairly, transparently, openly, and not obfuscating
20 facts.

21 So what does Mr. al Hawsawi and what does this place deserve
22 as a whole, as a government? Well, I'll tell you this, Judge. What
23 it doesn't deserve, and the reason the prosecution doesn't just

1 deserve a trial date, is because in 2013, big G -- all right? -- we
2 had to deal with listening devices that were intruding upon
3 attorney-client relationships and spend a significant amount of time
4 litigating that issue before the commission so that we could have the
5 confidence that our communications were not being monitored by hidden
6 listening devices.

7 So that's one reason big G did not deserve and did not earn
8 the right to an earlier trial date, because we had to spend
9 significant time, energy, litigating that issue before a previous
10 commission.

11 In 2014, big G again indicated and let us know that they did
12 not earn the right to a trial date, because at that time they were
13 planting informants on the defense teams, in the defense teams. In
14 2014, we learned that the FBI had tried and had, in essence, tried to
15 implant informants into one of the defense teams and sought to reach
16 other defense teams. That led to 15 months of litigation where there
17 was an entirely separate prosecution team that was brought in because
18 this prosecution team or the prosecution team at that time had to be
19 squared off.

20 So we actually shuffled in one prosecution team while
21 another prosecution team shuffled out. And we did that for 15 months
22 because of the government's conduct again.

23 In 2015 through '16, in AE 350, we had to expend time and

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1 energy in this capital case with this litigation litigating the
2 presence of a former translator who had been in a black site and who
3 had been actually put on one of the -- these men's teams and the
4 propriety of that and the concerns with that. So we expended a lot
5 of time and energy once again, because the government had somehow put
6 a former CIA translator in one of these defense teams.

7 In 2017, there was an issue -- there was a judge-issued
8 ruling dismissing Charges III and V by Judge Pohl. Again, the
9 government made a decision that they wanted to appeal that ruling.

10 And yet they have the audacity to come in here with zingers
11 and lines about litigating on a hamster wheel and litigiousness on a
12 hamster wheel when they are just as much to blame and their hands are
13 just as dirty as anything in terms of the litigation that we sought
14 to do in this case. So in 2017, that plunged us into appellate
15 litigation because they didn't like the ruling.

16 And 2018 has been discussed. Judge Pohl, previous to
17 retiring, suppresses the LHM statements. Again, litigiousness.
18 Prosecution makes the choice, they want to take this up on appeal.

19 In 2019, Judge Parrella, who Colonel Bearden describes as
20 admirably reversing Judge Pohl's ruling -- by the way, a couple of
21 facts about Judge Parrella.

22 Judge Parrella was a former DoJ prosecutor who actually
23 worked in the same office as some of these prosecutors and who

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1 actually participated and ran with some of the prosecutors who were
2 then on this team. He is the judge that issued this ruling that
3 plunged us into the litigation that you have inherited years and
4 years later.

5 So that was a result, once again, of a government appeal.
6 Fully within their rights to appeal. But, again, to come in here and
7 have the audacity to complain about litigiousness when they're the
8 ones who are actually causing much of this litigation and plunging us
9 into what I call, then, this litigation experiment, which continues
10 to this very day, is, quite frankly -- it's admirable in a way that
11 can get up here and argue this.

12 Obviously, in 2021, we had COVID. The government didn't
13 really have a hand in that, but nevertheless, it was part of
14 the -- and then we've talked about the plea agreements and the
15 reneging of the plea agreements and the prosecution's choices in the
16 prosecution of this case and in the way that this case has been
17 handled.

18 But the bottom line is that this is simply a show. This is
19 simply a show. Because when you look at the litigation before the
20 court, you look at the number of motions that are pending before you,
21 you look at the litigation posture of Mr. Ali's case, you look at our
22 pending litigation before the Supreme Court, you look at everything
23 that you've, in essence, inherited, asking for a trial date is simply

1 a show. That's what it is.

2 It's not realistic. It's simply coming before this court
3 because they want what Colonel Bearden said, which I said many, many,
4 many moons ago. Because as I've said many times, this is like déjà
5 vu over again. It is like Groundhog Day. This is not the first time
6 we've had this argument. It's not the first time we've heard the
7 government make the same arguments.

8 But the disheartening part is that they don't seem to have
9 learned their lesson.

10 Major Elspeth made a great point in talking about all of the
11 amount of discovery that was provided after each of the times that
12 the government had asked for trial schedules. The government simply
13 hasn't learned their lesson. And the reality is that they don't
14 deserve a trial date because they haven't earned it by their conduct.
15 They haven't earned it by their decisions. They haven't earned
16 it -- big G -- by being transparent, by keeping their hands off our
17 cases, by keeping their informants off our cases, by keeping their
18 cameras out of our meeting rooms. They haven't earned it.

19 And so to come in here and ask as though they deserve? No,
20 they don't deserve that. What we deserve is due process. What the
21 defendant deserves is due process. And that is what we're asking in
22 this particular case.

23 So as you -- as you look forward, you know, in terms of the

1 way forward, I think one of the main things that I would suggest to
2 the commission that you have to address is the accountability of the
3 convening authority -- right? -- the accountability of the convening
4 authority in terms of providing the adequate transportation, as
5 Mr. Connell very well highlighted to you, housing as well, as well as
6 the support for the personnel who are going to come on this island
7 and supposedly try this case.

8 It is exactly why I said and why I said it back then, it's
9 not a matter of just build it and they will come. Or in this case,
10 Judge, just schedule it and we will try it. It just doesn't work
11 that way and it hasn't worked that way. And judge after judge after
12 judge has ultimately realized that it simply doesn't work because the
13 government's conduct has impeded the ability to make that work.

14 So convening authority accountability is one. Obviously,
15 looking at the motions that are before the commission is second.
16 We've highlighted a couple of other motions that we think, at least
17 for Mr. al Hawsawi's case, are dispositive motions. They could
18 obviate the need for further litigation.

19 We think that the 524 series, which I think you recently
20 asked us for specified issues on, our position in those was stated in
21 524MMM (MAH) and 524MMM (MAH Sup) which was filed 20 December 2023.

22 So in that second filing, the 524MMM (MAH Sup) on 20
23 December 2023, we said, Look, we've been at this litigation

1 experiment now, the one that Judge Parrella plunged us into, for a
2 number of years. The record is replete and developed with examples
3 of why the defense cannot necessarily conduct the litigation it needs
4 to conduct in a death penalty case that lets us back to Judge Pohl's
5 original ruling.

6 So in that particular motion, we said: Judge,
7 reinstate -- reconsider and reinstate Judge Pohl's ruling, because
8 the experiment is and should be over. And we don't even need to get
9 to the voluntariness issue, because we simply look at the record and
10 look at everything that has happened during the time that we've
11 litigated that, with impediment with issues, with witness issues,
12 with national security invocations, and we highlighted all that for
13 the commission in this supplement.

14 So our position today, Judge, is there are a number of
15 avenues that while we're discussing a trial date would obviate the
16 need for a trial date, at least for Mr. al Hawsawi. And those
17 include pending AEs that have been fully argued. They include
18 revisiting the 524MMM (MAH Sup) issue, right? And we do think that
19 the commission I think would do well to take a look at those motions
20 as well as you look forward to a particular trial date.

21 That's all I have, Judge. Thank you.

22 MJ [LtCol SCHRAMA]: Thank you, Mr. Ruiz.

23 Colonel Bearden, as the government carrying the burden, I

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1 will give you last word.

2 DTC [COL BEARDEN]: Permission to approach, Your Honor?

3 MJ [LtCol SCHRAMA]: You may.

4 And, Colonel Bearden, I actually have two questions at the
5 outset. Number one is -- I didn't necessarily ask you, but it came
6 up with defense counsel. Once discovery in this case is -- the
7 discovery motions pending the court are resolved, what do you see as
8 the next kind of large litigation milestone?

9 DTC [COL BEARDEN]: To credit Mr. Connell, quite frankly, I
10 think that's the area that you move in. We move into the evidentiary
11 motions that are going to pertain to the trial. It's not terribly
12 complicated.

13 With respect to that, I thought the proposal actually made a
14 lot of sense, quite frankly.

15 MJ [LtCol SCHRAMA]: Okay. And then second, now, I've heard
16 defense counsel today talk about the decrease in flights that are
17 offered to GTMO and some discussion of training. Now, those issues
18 aren't necessarily squarely before the court for resolution, however,
19 do bear on a possible trial date.

20 Is the government confident that if I were to set a trial
21 date, which is the issue pending, that that is something that is
22 going to be able to be worked out with the convening authority to be
23 able to begin re-plussing up those flights to accommodate, not only

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1 the travel schedule of the commission as a whole, but for defense
2 counsel to be able to prepare and meet with their clients?

3 DTC [COL BEARDEN]: Your Honor, you know, this is actually
4 just another facet of a logistical approach that the defense is
5 taking. If you'll go back and read the record on previous trial
6 scheduling orders, you know, years ago it was we don't have more than
7 one courthouse or we don't have the logistical ability to accommodate
8 the number of people to be on island to do it.

9 And the answer and the response that Judge Cohen gave is:
10 I'm prepared to put the American government, if we order a trial
11 date, to the test of actually spending the money they need to spend
12 to make it happen.

13 And it's a point worth well taking that in order to further
14 investigate the case they need to put on the case that they have to,
15 that they have to have those reasonable accommodations.

16 It's my belief -- I don't want to speak for anybody in the
17 convening authority's office, obviously. And I certainly don't want
18 to speak for the chief prosecutor as I'm standing here. But it's my
19 belief personally that the American Government, to the extent we have
20 a trial date, will do what's necessary to help us get to that first
21 witness and meet our burden.

22 MJ [LtCol SCHRAMA]: Okay. And, Colonel Bearden, those are my
23 two questions. If you would like to highlight anything else in

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1 conclusion, you are more than welcome to.

2 DTC [COL BEARDEN]: I would, Your Honor. And I don't know if
3 it's considered a zinger. I might be relatively new here, but I'm
4 not new. And I've been around long enough that there's a big
5 difference between a severance, or a request for a severance, and
6 actually proposing a trial date.

7 And if you go back and look at the record, I don't think
8 there's one instance in the history of the record in which Mr. Ruiz
9 or his team has ever in the history of this litigation proposed
10 themselves a trial date.

11 But I can tell you what they have done, because I've argued
12 probably two or three motions for speedy trial that they've
13 presented. And if that's not the height of litigiousness, I don't
14 know what is.

15 So perhaps I can be called audacious for saying that when we
16 file multiple motions saying we want one thing but we're unwilling to
17 do the other, I guess that's audacity. But that's the consistency
18 with which we hear these arguments. These type of hearings turn into
19 a sua sponte discovery grievance hearing oftentimes and that's just
20 one more example.

21 What I would have liked to have said at the beginning, and I
22 failed, aside from utilizing the military phonetic "microphone" as
23 opposed to "Mike," which I'll ask the court's indulgence on, is we

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1 actually filed the motion that we're arguing before the bar today
2 four months ago.

3 You know, we didn't have any anticipation as to when we
4 would actually get to this litigation. You could have sat it down,
5 quite frankly, last session theoretically.

6 So four months to what we asked for, 11 January of 2027,
7 puts us at approximately, let's say, May or June of 2027. And after
8 having listened to Mr. Connell's proposal, which puts out a timeline
9 of November of the same year, we're really not that far apart.

10 And so hypothetically, if you were to split it down the
11 middle, we'd take that in a heartbeat. So we're really not that far
12 apart.

13 The critical point is having a trial date and getting at
14 these motions that we previously talked about. What does that do?
15 It affords the government that when the CMCR decision is released, we
16 got a trial date. We can strategically make the right decision as to
17 what we should or should not do with those LHMs.

18 Do we want to appeal it? Do we not want to appeal it? If
19 there's a trial date, perhaps not. Perhaps. That's a decision if
20 you have those milestones in place, whether it's January or May, or
21 in the case of Mr. Connell, November of next year, we can at least
22 say we now know with some certainty that we have a trial date, and is
23 it better to go forward with litigation on those issues or is it

1 better to cut our losses and go to trial?

2 That's a strategic decision that you have to make as a
3 prosecutor and that's where we are. We're far more likely to
4 consider the necessity of appeal of an LHM if we actually had a trial
5 date.

6 So that's the best I have right now, Your Honor, subject to
7 your questions.

8 MJ [LtCol SCHRAMA]: Just to clarify, so I did ask you at the
9 outset, Colonel Bearden, the date you proposed is January 11th.

10 DTC [COL BEARDEN]: Right.

11 MJ [LtCol SCHRAMA]: But you obviously submitted that on
12 either January 10th or 12th. So essentially it's a year, for
13 example -- a year from -- if the court were to put out a trial order,
14 a year from that date is essentially what you're proposing?

15 DTC [COL BEARDEN]: Absolutely. And the thought being when we
16 filed it, let's give the court a year to establish these milestones.

17 You know, when we first filed it back in January, the
18 understanding is, okay, given that time frame, given the number of
19 motions that are still outstanding, that it would put, you know, Your
20 Honor, in a position of newly coming in to have to resolve only a
21 couple a week up until that point that kind of -- we've got a flow.

22 Obviously, now we've moved that four months before we've had
23 the hearing today, but the understanding being we wanted to provide

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1 the court the opportunity to do the work that we're now asking you to
2 do.

3 MJ [LtCol SCHRAMA]: Sounds good. Thank you, Colonel Bearden.

4 DTC [COL BEARDEN]: Yes, Your Honor.

5 MJ [LtCol SCHRAMA]: Counsel, is there any other issues that
6 we need to take up before we recess for the evening?

7 Okay. With that, so we will proceed tomorrow morning at
8 0900 with the prosecution's argument on Mr. Mohammad's LHM
9 suppression motion.

10 One other item that I would like counsel to think about over
11 the next week as we are planning, I think I've highlighted in one of
12 my conversations with counsel, it is the court's intent over the next
13 few months to do its best effort to get out rulings in each of these
14 LHM, but also to get through the list of outstanding motions that
15 counsel presented to me.

16 Now, when I say that, I don't intend to get through the
17 approximately 90 of them, but I've identified approximately
18 twenty -- I think -- five or 26 discovery motions. And I would like
19 to at least get resolution on the discovery issues so that parties
20 can plan accordingly and we can -- if that generates new motions or
21 additional discovery, we'll at least have a path forward.

22 Now, with that, I'm trying to figure out how my time is
23 going to be best spent.

1 I know we have hearings scheduled in June and July. So I
2 would like counsel to think about this week, what is the next thing
3 while you're pending resolution of that that we will need to take up
4 and when is it best to do that so that we can kind of project what
5 that item is going to be but also how we can best spend our time as
6 the court tries to get those out.

7 So think about it. And then as we conclude our time during
8 this session, I'll revisit that topic so I can have a substantive
9 conversation with counsel to kind of figure out that road ahead.

10 Is that clear? Does that make sense?

11 I see positive head nods, so I believe I have accomplished
12 that.

13 Okay. Seeing nothing else for the court to take up this
14 evening, we are in recess until 0900 tomorrow.

15 **[The R.M.C. 803 session recessed at 1739, 04 May 2026.]**

16 **[END OF PAGE]**