

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

UNITED STATES OF AMERICA v. KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN ‘ATTASH, ALI ABDUL AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI	AE 989BB RULING and TRIAL SCHEDULING ORDER Government Fourth Motion for a Trial Scheduling Order 26 August 2026
--	--

1. **Background.** On 1 June 2026, the Commission deferred ruling on the Prosecution’s request for a Trial Scheduling Order (TSO) and instead issued AE 989O, a Trial Conduct Order (TCO), to drive resolution of pretrial discovery and evidentiary disputes.¹ With the AE 989O TCO actively managing pretrial litigation, the Commission is now prepared to lift its deferral. This Ruling and Order establishes a macro-level TSO of milestones culminating in a trial date, built around the deadlines and processes already established in the AE 989O TCO.

2. Procedural History.

- a. On 12 January 2026, the Prosecution filed a motion for a TSO.²
- b. On 1 June 2026, the Commission deferred ruling on the request for a TSO and instead issued the AE 989O TCO.
- c. On 5 August 2026, the Commission issued AE 989X, modifying the AE 989O TCO.³

¹ See AE 989O Ruling and Trial Conduct Order, dated 1 June 2026.

² See AE 989 (GOV), Government Fourth Motion for a Trial Scheduling Order, filed 12 January 2026.

³ See AE 989X Ruling and Order, Defense Motion to Clarify and Modify AE 989O, Ruling and Trial Conduct Order, dated 5 August 2026.

d. The Prosecution and the Accused have filed numerous notices and status updates demonstrating their ongoing compliance with the AE 989O TCO.

3. Findings.

a. In the AE 989O TCO, the Commission established deadlines and processes to drive resolution of pretrial evidentiary and compliance disputes.

b. Additionally, on the discrete question of whether to suppress as involuntary those statements of the Accused documented in Federal Bureau of Investigations (FBI) Letterhead Memoranda (LHM), the Commission promulgated the FBI LHM TCO.⁴

c. The Prosecution's requested trial date of 11 January 2027 is incompatible with the AE 989O TCO. A realistic trial date must account for the hearing and resolution of pretrial evidentiary and compliance motions, including the FBI LHM suppression motions.

d. A macro-level TSO is now necessary to establish the final milestones for the administration of this case.

4. **Law.** The military judge must exercise reasonable control over the proceedings.⁵

5. Analysis.

a. The Commission distinguishes between the granular, iterative *deadlines* issued in the AE 989O TCO and the FBI LHM TCO and the broader *milestones* that mark significant phases of progress toward a trial on the merits.

⁴ See AE 630LLLLL / AE 631BBBB / AE 632CCCC, Trial Conduct Order, Motions by Messrs. Mohammad, bin 'Attash, and Hawsawi to Suppress Federal Bureau of Investigation (FBI) Letterhead Memoranda (LHM) Statements, dated 3 December 2025; AE 630UUUUU / AE 631HHHH / AE 632LLLL Ruling, Mr. Mohammad and Mr. al Hawsawi's Motion to Cancel the January Hearings, Suspend Filing Deadlines Related to Their Motions to Suppress the Letterhead Memorandum (LHM) Statements, and Excuse Them from Participation in Contested Litigation And AE 631CCCC (WBA), Mr. Bin 'Attash's Motion to Suspend All Deadlines in AE 631BBBB (TCO), dated 27 January 2026.

⁵ See 10 U.S.C. § 948j; Rule for Military Commissions (R.M.C.) 801(a)(3).

b. The Commission will not duplicate or supersede the deadlines already functioning under the AE 989O TCO (as modified by AE 989X) and in the FBI LHM TCO. Those orders remain the governing framework for resolving evidentiary and compliance disputes in this case.

c. The TSO issued today serves as the overarching scaffolding. It assumes the successful completion of the deadlines in the AE 989O TCO and the FBI LHM TCO and establishes milestones leading to a trial on the merits starting on Monday, 5 June 2028.

d. Should a Party determine that a new development in law or fact necessitates an evidentiary or compliance motion closer to trial, the AE 989O TCO already contains the appropriate mechanism to seek an extension of time or leave to file a motion out of time. The pendency of interlocutory appellate litigation does not justify halting the preparation for a trial on the merits.

6. Rulings.

a. The Prosecution's request in AE 989 (GOV) to establish a TSO is **GRANTED IN PART** and **DENIED IN PART**.

b. The Prosecution's request to adopt the specific schedule proposed in Attachment D of AE 989 (GOV) is **DENIED**.

c. The Prosecution's request for a trial date of 11 January 2027 is **DENIED**.

7. Trial Scheduling Order (TSO).

a. The AE 989O TCO, as clarified and modified by AE 989X, remains in effect. All deadlines ordered therein are undisturbed and govern the ongoing litigation of pretrial matters.

b. Trial Execution Phasing: Trial on the merits shall begin on Monday, 5 June 2028.

(1) Findings.

A. Assembly, challenges, and empanelment will occur beginning on 5 June 2028.

B. Opening statements will commence 30 calendar days after the members are empaneled. An Accused may elect to defer opening statements until the conclusion of the Prosecution's presentation of its evidence for its case-in-chief.

C. The Prosecution's presentation of its evidence in its case-in-chief will commence *immediately* after the conclusion of the Prosecution's opening statements (and the Accused's opening statements, if not deferred).

D. Any Accused may file a motion for a finding of not guilty under Rule for Military Commission (R.M.C.) 917 within 14 calendar days after the conclusion of the Prosecution's presentation of its evidence in its case-in-chief. The Prosecution may file a response within 14 calendar days of the Accused's filing, and the Accused may file a reply within 7 days of the Prosecution's response.

E. If the Prosecution decides to reopen its case as to the insufficiency specified in the motion, any presentation of evidence for such purposes shall commence within 45 days after the conclusion of the Prosecution's presentation of its evidence in its case-in-chief.

F. Oral argument on any motion for a finding of not guilty under R.M.C. 917 shall commence *immediately* after the conclusion of the presentation of evidence by the Prosecution upon reopening its case, or, if the Prosecution has not reopened its case, oral argument shall commence 45 calendar days after conclusion of the Prosecution's presentation of its evidence in its case-in-chief.

G. The Accuseds' presentations of evidence in their case-in-chief (and opening statements, if deferred) will commence 60 calendar days after the conclusion of the Prosecution's presentation of its evidence in its case-in-chief.

H. Any Accused may file a motion for a finding of not guilty under R.M.C. 917, and the Prosecution and that Accused may be heard thereon, *immediately* after the conclusion of all Accuseds' presentations of evidence in their case-in-chief.

I. The Prosecution's presentation of evidence in rebuttal, if any, will commence *immediately* after the conclusion of the Accuseds' presentations of evidence in their case-in-chief.

J. The Accuseds' presentation of evidence in surrebuttal, if any, will commence *immediately* after the conclusion of the Prosecution's presentation of evidence in rebuttal.

K. Any Accused may file a motion for a finding of not guilty under R.M.C. 917, and the Prosecution and that Accused may be heard thereon, *immediately* after the conclusion of the Parties' presentations, if any, of evidence in rebuttal and surrebuttal.

L. Absent a showing of good cause, the Commission will not grant an extension of time or a continuance for the filing or resolution of a motion for a finding of not guilty under R.M.C. 917, nor for the presentation of rebuttal or surrebuttal evidence.

M. The presentation of any evidence requested by the military judge or members, if any, will commence *immediately* after the conclusion of the Parties' presentations of evidence.

N. The Parties may present closing argument on findings *immediately* after the conclusion of the presentation of all evidence in findings.

(2) Presentencing, if any.

A. The Prosecution's presentation of evidence of prior convictions, rehabilitative potential, and evidence of aggravation will commence 30 calendar days after the announcement of findings.

B. The Accuseds' presentation of evidence in extenuation or mitigation, or both, will commence *immediately* after the conclusion of the Prosecutions' presentation of evidence.

C. Argument from the Prosecution on sentence will commence *immediately* after the conclusion of the Accuseds' presentation of evidence.

D. Argument from the Accused on sentence will commence *immediately* after the conclusion of the Prosecution's argument.

E. No presentations of evidence or argument in rebuttal or surrebuttal shall be permitted absent a showing of good cause.

c. TSO Milestones:

(1) **NLT Monday, 6 December 2027**, the Defense shall file notice under Military Commission Rule of Evidence (M.C.R.E.) 505(g)(1)(A) of all classified information the Defense intends to elicit or disclose at *any point* during the findings phase of the trial—whether on cross-examination of witnesses during Prosecution's case-in-chief or rebuttal, or during the Defense's case-in-chief or surrebuttal.

(2) **NLT Monday, 10 January 2028**, the Prosecution shall file any objections to the Defense's M.C.R.E. 505 findings-phase notices and propose alternatives to the Defense's use of such information.

(3) **NLT Monday, 31 January 2028**, the Parties shall confer and file a *joint* proposed panel member questionnaire and a proposed cover letter for the questionnaire to be signed by the military judge. The joint proposed panel member questionnaire shall address matters relevant to both findings and capital sentencing, including, but not limited to, the statutory and regulatory qualifications to serve, age, education, marital status, number and age of children, years of military service, current duty title, grade, current unit of assignment, date arrived on station at

current assignment, date expected to depart current assignment for a permanent change of station, expected date of separation, current place of residence, prior interactions between the member themselves or an immediate family member with U.S. law enforcement, prior interactions between the member themselves or an immediate family member with the U.S. intelligence community, prior experience with the attacks on 11 September 2001 by the member themselves or an immediate family member, prior experience with any act of terrorism by the member themselves or an immediate family member, prior experience with any act of homicide or a crime involving serious bodily harm by the member themselves or an immediate family member, prior involvement in a criminal proceeding by the member themselves or an immediate family member, prior service as a juror, prior service as a court-martial panel member, prior service as a member of a military commission, knowledge of and opinions about this case, political advocacy activity (including on social media), views on the form of government established by the U.S. Constitution, and general questions designed to identify bias, prejudice, or preconceptions that would prevent the member from reaching a fair decision based solely on the evidence and the law. By the same date, the Parties may file supplements to the joint pleading containing commentary, proposing additional questions, and articulating disagreement.

(4) **NLT Monday, 31 January 2028**, the Parties shall file *joint* proposed group and individual *voir dire* questions. By the same date, the Parties may file supplements to the joint pleading containing commentary, proposing additional questions, and articulating disagreement.

(5) **NLT Monday, 14 February 2028**, the Parties shall confer and file *joint* proposed instructions on findings and on sentencing. By the same date, the Parties may file supplements to the joint pleading containing commentary and articulating disagreement.

(6) **NLT Monday, 14 February 2028**, the Commission shall issue an approved panel member questionnaire.

(7) **NLT Monday, 28 February 2028**, the Convening Authority shall promulgate an amended convening order that details and vices primary and alternate members as necessary.

(8) **NLT Monday, 6 March 2028**, the Prosecution shall certify that each member detailed to the Commission has been served a copy of the approved panel member questionnaire and has been instructed to return said questionnaire to the Prosecution within 7 calendar days.

(9) **NLT Monday, 20 March 2028**, the Prosecution shall gather and file, under seal, the completed panel member questionnaires. Should any panel member not complete a questionnaire, the Prosecution shall ensure notice is made to that member's commanding officer to facilitate their assistance in obtaining a completed questionnaire. Any questionnaire returned late shall be filed with the Commission, under seal, as soon as is practicable.

(10) **NLT Monday, 3 April 2028**, the Prosecution and Defense shall confer and file, under seal, a *joint* notice of any detailed members the Parties agree should be excused for cause. The Prosecution shall ensure that a copy of the sealed joint pleading is delivered to the Convening Authority, and upon delivery, shall certify as much to the Commission.

(11) **NLT Monday, 17 April 2028**, the Convening Authority shall promulgate a final amended convening order that details and vices primary and alternate members as necessary.

(12) **NLT Monday, 24 April 2028**, the Prosecution shall provide counsel for the Accused, under an appropriate protective order as necessary, copies of the panel selection materials required under R.M.C. 912(a). Additionally, by the same date, for the good cause of preventing avoidable delays, the Prosecution shall provide counsel for the Accused, under an

appropriate protective order as necessary, materials pertaining to persons who were not selected for detail as members.

(13) **NLT Monday, 1 May 2028**, the Defense shall file any motions challenging panel selection, as well as any associated motions to compel testimony or evidence. The Prosecution may file responses within seven (7) calendar days, and the Defense may file replies within seven (7) calendar days of the Prosecution's response.

(14) **NLT Monday, 1 May 2028**, the Parties shall confer and offer for preadmission all exhibits for the findings phase of trial, in final form, ready for presentation to the members. Consistent with the Commission's ruling in AE 989X, these exhibits shall be drawn exclusively from the universe of evidence previously disclosed and litigated under the AE 989O TCO deadlines, absent leave of the Commission for good cause shown.

(15) **NLT Monday, 1 May 2028**, the Parties shall confer and file a final notice listing all witnesses for the findings phase of trial, in their proposed order of presentation and with an estimate for each witness of the number of hours that will be necessary for the Parties to complete direct, cross, redirect, and recross examination of the witness. Consistent with the Commission's ruling in AE 989X, this final list shall be drawn exclusively from the universe of witnesses previously disclosed and litigated under the AE 989O TCO deadlines, absent leave of the Commission for good cause shown.

(16) **NLT Monday, 1 May 2028**, the Parties shall file motions to determine whether a witness for the findings portion of trial should be permitted to testify at a remote site or whether protective testimonial procedures should be afforded to a witness.

(17) **NLT Monday, 8 May 2028**, the Parties shall file notice of any objections to any exhibits offered for preadmission.

(18) **NLT Monday, 15 May 2028**, the Commission will hold a final pretrial hearing to preadmit exhibits and address any outstanding matters prior to commencing trial on the merits.

(19) On **Monday, 5 June 2028**, trial on the merits shall begin.

(20) **Within 24 hours of the announcement of findings** that an Accused is guilty of any offense, that Accused shall file a Notice of Intent to rely on sealed presentencing matters, in accordance with AE 989X ¶ 7.c.

(21) **Within 24 hours of the announcement of findings** that an Accused is guilty of any offense, the Defense shall file notice under M.C.R.E. 505(g)(1)(A) of all classified information the Defense intends to elicit or disclose at *any point* during the presentencing phase of the trial.

(22) **Within 7 calendar days of the announcement of findings** that an Accused is guilty of any offense, the Prosecution shall file any objections to the Defense's M.C.R.E. 505 presentencing phase notices and propose alternatives to the Defense's use of such information.

(23) **Within 14 calendar days of the announcement of findings** that an Accused is guilty of any offense, the Parties shall confer and offer for preadmission all exhibits for the presentencing phase of trial, in final form, ready for presentation to the members. These exhibits shall be drawn exclusively from the universe of evidence previously disclosed and preserved under the AE 989O TCO deadlines, absent leave of the Commission for good cause shown.

(24) **Within 14 calendar days of the announcement of findings** that an Accused is guilty of any offense, the Parties shall confer and file a final notice listing all witnesses for the presentencing phase of trial, in their proposed order of presentation and with an estimate for each witness of the number of hours that will be necessary for the Parties to complete direct, cross, redirect, and recross examination of the witness. This final list shall be drawn exclusively from

the universe of witnesses previously disclosed and preserved under the AE 9890 TCO deadlines, absent leave of the Commission for good cause shown.

(25) **Within 14 calendar days of the announcement of findings** the Parties shall file motions to determine whether a witness for the presentencing portion of trial should be permitted to testify at a remote site or whether protective testimonial procedures should be afforded to a witness.

(26) **Within 21 calendar days of the announcement of findings** that an Accused is guilty of any offense, the Commission will hold a final presentencing scheduling conference.

(27) **Presentencing proceedings shall commence 30 calendar days after the announcement of findings** that an Accused is guilty of any offense.

d. The Commission will issue subsequent TCOs and Docket Orders as necessary to provide granular detail, establish deadlines, and dictate the mechanics for executing the macro-level milestones set forth in this TSO. These orders will manage specific discovery, procedural, administrative, and evidentiary matters arising during the pendency of this TSO, as well as set the specific agendas and witness schedules for all future hearing sessions.

So **ORDERED** this 26th day of August, 2026.

//s//

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