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1 **[The R.M.C. 803 session was called to order at 1023, 25 June 2025.]**

2 MJ [Lt Col BRAUN]: This commission will come to order.

3 As we have transitioned to an open session, Trial Counsel,
4 could you please account for who is present for the government?

5 TC [Lt Col GOEWERT]: Your Honor, for the United States are
6 myself, Lieutenant Colonel Christopher Goewert, and Major Kristy
7 Milton appearing from the courtroom here. We have no one at the RHR.

8 MJ [Lt Col BRAUN]: Okay. Thank you.

9 Mr. Fanniff?

10 LDC [MR. FANNIFF]: Yes, Your Honor. It is myself, Lieutenant
11 Colonel Brent Stricker, Captain Tara Trull, Captain Reid Hopkins here
12 in Guantanamo, and Lieutenant Colonel Desiree Fernandez in the RHR.

13 MJ [Lt Col BRAUN]: Thank you.

14 Trial Counsel, can you affirm these proceedings are being
15 transmitted by closed-circuit TV to the United States in compliance
16 with the commission's order in AE 0007.006?

17 TC [Lt Col GOEWERT]: Your Honor, we can affirm that they are
18 being transmitted -- this session is being transmitted live to
19 locations at Fort Meade and the Pentagon.

20 MJ [Lt Col BRAUN]: Okay. Is the teletype capability
21 authorized in AE 0012.020 being utilized?

22 TC [Lt Col GOEWERT]: No, Your Honor, it is not.

23 MJ [Lt Col BRAUN]: Prior to convening this open session the

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 commission had an R.M.C. 802 conference with the parties. Present
2 were representatives of trial and defense teams. The accused was
3 absent for that R.C.M. 802 session -- or R.M.C. 802 session. At that
4 session trial counsel alerted the commission to the fact that
5 Mr. Nurjaman has elected not to be present this morning and would be
6 prepared to address that on the record.

7 Additionally, defense counsel alerted the commission to some
8 updates with regard to Mr. Hodes' participation later this week. No
9 evidence was received, argument entertained, nor ruling provided
10 during that R.M.C. 802 conference.

11 Does either side wish to object to or supplement my summary?

12 Trial Counsel?

13 TC [Lt Col GOEWERT]: No, Your Honor.

14 MJ [Lt Col BRAUN]: Defense counsel?

15 LDC [MR. FANNIFF]: No, Your Honor.

16 MJ [Lt Col BRAUN]: Okay. I do note that the accused is
17 absent from this session this morning.

18 Trial Counsel, let's take up that matter at this time.

19 ATC [Maj MILTON]: Yes, Your Honor. The government has
20 premarked the waiver forms, one in English and one in Bahasa. I
21 believe they're marked currently as AE 0108.001.

22 MJ [Lt Col BRAUN]: So I would also note that that is, in
23 total, a four-page exhibit. It bears a date on page 1, page 2,

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 page 3, and page 4 of 25 June 2025.

2 Trial Counsel, do you have additional evidence you would
3 like to provide as it relates to that waiver?

4 ATC [Maj MILTON]: Yes, Your Honor. I believe marked next in
5 the series is a declaration provided from the same individual whose
6 pseudonym appears on the waiver forms to address the questions that
7 the government would normally ask concerning the waiver and the
8 voluntariness of the waiver.

9 MJ [Lt Col BRAUN]: Has defense counsel been provided copies
10 of both AE 0108.001 and then the declaration, which is 0108.002?

11 ATC [Maj MILTON]: Yes, Your Honor.

12 MJ [Lt Col BRAUN]: Okay.

13 Defense Counsel, anything -- any objection you'd like to
14 place on the record as to either of these two documents?

15 LDC [MR. FANNIFF]: Your Honor, the substance of the documents
16 I have no concerns with. I do not believe that there is any
17 misstatements of facts in here.

18 I do have a procedural issue with a declaration sworn under
19 the penalty of perjury that's signed via a pseudonym, understanding
20 that this could be a public copy and having a properly signed
21 declaration as under seal or some other method of providing that,
22 Your Honor.

23 MJ [Lt Col BRAUN]: Regarding the factual misstatements or the

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1 factual inaccuracies, is that -- are those contained in 0108.001 or
2 0108.002?

3 LDC [MR. FANNIFF]: No, Your Honor. I have no factual
4 inaccuracies.

5 MJ [Lt Col BRAUN]: Oh, I'm sorry. I misunderstood. Okay.
6 So there is no concern regarding the contents of the documents, it's
7 the use of the pseudonym in both those documents that defense counsel
8 has a concern with.

9 LDC [MR. FANNIFF]: Yes, Your Honor.

10 MJ [Lt Col BRAUN]: Okay. Trial Counsel?

11 ATC [Maj MILTON]: Yes, Your Honor. This individual's name is
12 classified and, therefore, would not be submitted. And his name is
13 not even permitted to go to the defense. Therefore, the government
14 would request to have him be permitted to testify under pseudonym, as
15 authorized under 10 U.S.C. 949d(c)(2)(B) and under 806(b)(2)(B)ii,
16 for personal safety.

17 To support the evidence in the record ----

18 MJ [Lt Col BRAUN]: Okay. Counsel, you're raising two issues
19 there. I don't know if that's intentional. First, you've raised a
20 classification issue. Then you've raised an issue regarding closure
21 for not national security but for personal safety.

22 ATC [Maj MILTON]: Yes, Your Honor. It's both.

23 MJ [Lt Col BRAUN]: Okay. Then we're going to have to step

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 through each one individually. So let's start with the
2 classification piece.

3 Okay. Proceed, Trial Counsel.

4 ATC [Maj MILTON]: Yes, Your Honor. This information is
5 contained in the record at AE 0011.001 Attachment E, page 2 of that
6 exhibit ----

7 MJ [Lt Col BRAUN]: Stand by, Counsel.

8 **[Pause.]**

9 ATC [Maj MILTON]: Sir, the full filing is on SIPR.

10 **[Pause.]**

11 MJ [Lt Col BRAUN]: Where is the ruling for that motion?
12 Counsel, what's the citation to the ruling?

13 ATC [Maj MILTON]: One moment, Your Honor. I believe it's
14 003, but I can try to confirm. I'm not sure if I have that
15 information here.

16 MJ [Lt Col BRAUN]: I'd direct your attention to 008 in that
17 series.

18 **[Pause.]**

19 MJ [Lt Col BRAUN]: I'm also seeing an order at 0011.009,
20 Trial Counsel. Take a look at that and tell me if that is the order
21 you're relying on.

22 ATC [Maj MILTON]: Your Honor, the government is not relying
23 on an order, which is why I don't have those documents presently in

1 front of me. However, I'm relying on the declaration that's attached
2 to our filing that states that this information is classified.

3 **[Counsel conferred with courtroom personnel.]**

4 MJ [Lt Col BRAUN]: Okay. Counsel, you don't have a working
5 copy available for the commission of that document available, do you?

6 ATC [Maj MILTON]: No, Your Honor. I've highlighted my
7 version of it.

8 MJ [Lt Col BRAUN]: Okay. So the commission is going to take
9 a recess to review that particular attachment as the commission does
10 not have access to it on the bench at this very moment, and I'm not
11 going to require counsel to wait while the commission acquires that.

12 Are there any other matters that the trial counsel
13 anticipates referring to so that the commission can review all of
14 those matters and be prepared to move ahead after that recess?

15 ATC [Maj MILTON]: One moment, Your Honor.

16 **[Counsel conferred.]**

17 ATC [Maj MILTON]: Yes, Your Honor. The government would also
18 cite to AE 0012.001 Attachment -- Attachment C. Both of these
19 attachments would cover not only the classified nature, but the
20 necessity to protect safety.

21 MJ [Lt Col BRAUN]: Okay. Thank you.

22 Defense Counsel, if during this recess you also could review
23 those same materials as you see -- to the extent you see necessary so

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 that when we come back on the record I'll ask if that changes your
2 position. And if I have additional questions, we can address those
3 at that time of trial, Counsel.

4 LDC [MR. FANNIFF]: Yes, Your Honor.

5 MJ [Lt Col BRAUN]: Okay. Anything further, then, before I
6 place us in a recess, Trial Counsel?

7 TC [Lt Col GOEWERT]: No, thank you, sir.

8 MJ [Lt Col BRAUN]: Okay. Defense Counsel?

9 LDC [MR. FANNIFF]: No, sir.

10 MJ [Lt Col BRAUN]: This commission's in recess.

11 **[The R.M.C. 803 session recessed at 1035, 25 June 2025.]**

12 **[The R.M.C. 803 session was called to order at 1117, 25 June 2025.]**

13 MJ [Lt Col BRAUN]: This commission will again come to order.

14 All parties that were present when the commission last
15 recessed are again present.

16 The commission had the opportunity to review the two
17 attachments detailed by trial counsel. In doing so, the commission
18 has additional questions. So I think the -- what the commission's
19 going to expect the parties to do to try and make this clean, Trial
20 Counsel, I'm going to have you brief this issue. I'm going to want
21 to see that brief by 1500 today.

22 Defense Counsel, you'll have an opportunity to respond.
23 We're talking specifically about the use of pseudonyms in this

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 commission, this -- in this situation, because I think this could
2 come up again.

3 I'm going to give you until 0800 to brief that. I'm going
4 to start -- I'm going to set a start time of 1000 tomorrow, and we're
5 going to start immediately with this particular issue. I think that
6 will permit the commission to have a better picture, will allow the
7 parties to formulate a full response to their respective positions,
8 and we can move forward smartly at that point.

9 So I'm going to -- we're not going to take up the rest of
10 argument on 0106 today. I'm going to resolve this issue, and then
11 we'll move into taking up the second half of those arguments in open
12 session tomorrow.

13 Any questions about that way ahead or any clarification
14 either side needs?

15 Trial Counsel?

16 ATC [Maj MILTON]: Not about this issue, Your Honor, but just
17 to ensure you have no further questions for the witness. The
18 declaration satisfied at least that piece due to the defense not
19 objecting to the factual basis?

20 MJ [Lt Col BRAUN]: Yeah, not at this time, no, Counsel.
21 That's an accurate understanding.

22 ATC [Maj MILTON]: Yes, Your Honor. Thank you. We'll release
23 the ----

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [Lt Col BRAUN]: Okay. Defense Counsel, any question?

2 LDC [MR. FANNIFF]: No question, Your Honor.

3 MJ [Lt Col BRAUN]: Okay. Thank you.

4 The one last thing I did want to take up, though, quickly,
5 the matter of Mr. Hodes' presence. I appreciate that he has a flight
6 early tomorrow morning, so -- at least based upon what's been
7 proffered to me by counsel. So probably most advantageous to try and
8 resolve that now.

9 LDC [MR. FANNIFF]: Yes, Your Honor. As I mentioned in the
10 802, I have received communication from Mr. Hodes alerting me to the
11 fact that his wife was called out of town for work, and that he has a
12 puppy who has recently had surgery, and he was concerned about
13 leaving the puppy for the trip tomorrow. He has not refused to come.
14 I will highlight that, Your Honor.

15 He did mention a request as to whether he could present via
16 telephonic means so he doesn't have to leave the puppy, or the
17 potential of answering any kind of commission's questions via
18 declaration or interrogatories or other means, Your Honor.

19 MJ [Lt Col BRAUN]: Okay. And he has
20 no -- understanding -- at least it's the commission's understanding,
21 based upon your proffer here, that he -- this situation with his wife
22 is a kind of new development that he did not -- neither of them
23 anticipated, and that's what's causing the difficulty?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 LDC [MR. FANNIFF]: That is my understanding, Your Honor.

2 MJ [Lt Col BRAUN]: Okay. I will say the commission's
3 disappointed that it cannot easily have the production of Mr. Hodes
4 here to resolve some issues that the commission feels need to be
5 resolved. It's been over a year since he has been in this courtroom
6 on the record, and the commission wants to discuss with him his
7 continued representational duties of Mr. Nurjaman. I think that
8 part's been pretty clear on the record and the request of the
9 commission.

10 The commission also understands that things happen in life,
11 and unexpected things happen, and we do the best we can, but we do
12 need some flexibility.

13 So the commission's aware that we have another docketed date
14 coming up in early September. The commission also has the ability,
15 if it feels necessary, to issue interrogatories to Mr. Hodes for him
16 to respond to in writing to the commission prior to that hearing, and
17 then if there are additional questions, Mr. Hodes can be available
18 for that September hearing to address those additional questions.

19 I will, based upon that, show some understanding that life
20 happens, and based upon the proffers of officers of the court,
21 officers of the commission, forego his requirement to travel
22 tomorrow. If the commission has additional matters, it will address
23 them through interrogatories.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 However, I do want to place on defense counsel's calendar
2 that come September, that September hearing date, we should make the
3 arrangements, start making the arrangements now to have Mr. Hodes
4 here.

5 If, based upon developments between then and now, the
6 commission doesn't have any questions, the commission will easily
7 deal -- you know, provide updates to the parties. But I need the
8 preparations to be made now so Mr. Hodes is available in
9 September -- I think that's plenty of notice -- so that we can
10 address the issues that the commission would like to address.

11 LDC [MR. FANNIFF]: Understood, Your Honor.

12 MJ [Lt Col BRAUN]: Okay. Anything else we need to cover with
13 regard to Mr. Hodes?

14 LDC [MR. FANNIFF]: Nothing additional, Your Honor.

15 MJ [Lt Col BRAUN]: I don't believe there's anything else that
16 we can take up at this particular time. I think the parties have the
17 way ahead.

18 We will, as I'd mentioned, reconvene tomorrow morning, 1000
19 open session, handle this matter involving pseudonyms, then take up
20 the rest of arguments and then any other business that the parties
21 need the commission to take up at that time.

22 Anything else we need to do, then, before I recess for the
23 day?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Trial Counsel?

2 TC [Lt Col GOEWERT]: No, thank you, Your Honor.

3 MJ [Lt Col BRAUN]: Defense Counsel?

4 LDC [MR. FANNIFF]: Nothing, Your Honor.

5 MJ [Lt Col BRAUN]: Okay. This commission's in recess until
6 1000 tomorrow morning.

7 **[The R.M.C. 803 session recessed at 1126, 25 June 2025.]**

8 **[END OF PAGE]**