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1 **[The R.M.C. 803 session was called to order at 0959, 26 June 2025.]**

2 MJ [Lt Col BRAUN]: This hearing is called to order.

3 The accused is present.

4 Trial Counsel, can you account for the attorneys
5 representing the U.S. Government today?

6 TC [Lt Col GOEWERT]: Good morning, Your Honor. Present today
7 are myself, Lieutenant Colonel Christopher Goewert, and Major Kristy
8 Milton. No one is at the RHR. And this hearing is being broadcast
9 to viewing rooms at Fort Meade and at the Pentagon.

10 MJ [Lt Col BRAUN]: Counsel, is the teletype capability
11 authorized in AE 0012.020 being utilized today?

12 TC [Lt Col GOEWERT]: It is not being utilized, sir.

13 MJ [Lt Col BRAUN]: Thank you.

14 Defense Counsel?

15 LDC [MR. FANNIFF]: Yes, Your Honor. With me today is
16 Lieutenant Colonel Brent Stricker, Captain Tara Trull, and Captain
17 Reid Hopkins here in Guantanamo. And we have Lieutenant Desiree
18 Fernandez in the RHR.

19 MJ [Lt Col BRAUN]: Thank you, Counsel.

20 So consistent with yesterday's request, over our recess both
21 the government and defense filed motions -- a motion and response.
22 Those are found in the AE 0109 series dealing with the protection of
23 names of various Joint Task Force personnel during testimony in the

1 courtroom.

2 The commission had an opportunity -- first, thanks the
3 parties for meeting the court's suspense -- the commission's suspense
4 on those matters. The commission had an opportunity, because of the
5 timely filings, to review those particular filings.

6 Because Mr. Nurjaman's here today, the commission has a
7 little bit of ability to delay ruling on that particular matter.
8 What the parties will see, though, and what I want to alert you to,
9 is you're going to see an order coming from the commission asking for
10 some additional information that the commission feels is necessary to
11 fully rule on that particular order. Once the parties provide that
12 additional information, you'll see a written ruling with regard to
13 the government's request in that series.

14 Additionally, Defense, you filed at AE 0104.014 a request to
15 conduct closed session examination of Mr. Hodes. Based upon the
16 adjustment of the docket made by the commission to delay in-court
17 examination of Mr. Hodes until our September session, that request
18 now the commission sees as moot. So we won't be issuing -- I won't
19 be issuing a ruling on that. But just for clearing the record.

20 With that, I think the one remaining item, then, that we
21 have left to discuss on the commission's docket deals with the open
22 session argument in AE 0106. Is that the parties' understanding?

23 Trial Counsel?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 TC [Lt Col GOEWERT]: Yes, Your Honor. Regarding the
2 last -- the first item that the commission was discussing, the series
3 to protect the names of JTF personnel, the prosecution is currently
4 working to get a new declaration, and that will be forthcoming in the
5 very near future.

6 The only question that we have for the commission is whether
7 or not we would like -- the commission would like us to file that
8 under the 0109 series or place that in the 0012 or the 0011 series,
9 where it might fit, as it's a more recent version of a similar
10 declaration. Obviously, we can take the commission's advice.

11 And we'd also -- sort of looking at the filings that were
12 provided to the commission, it would seem that going forward it may
13 be that the commission would be satisfied with the waiver document
14 itself given by Mr. Nurjaman, the signed waiver, if this issue were
15 to occur again. Because there doesn't seem to be any debate between
16 the parties about the factual nature of that document, and that could
17 be a sufficient enough matter for the commission to consider in the
18 future when ruling on these issues. That might alleviate the need to
19 rule upon this in the future.

20 If the parties and the commission are satisfied that is a
21 proper foundational basis to make a ruling, his mere waiver of that
22 and that document is sufficient because there's no contest about
23 whether or not he did that or the voluntariness of it, then, you

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1 know, we'd propose the commission accept that in the future and
2 just -- and anytime he wishes to be absent, that that would be a
3 sufficient basis upon which to make a ruling versus requiring
4 additional JTF personnel or declarations, which create an unnecessary
5 issue.

6 So we propose that the commission consider accepting just
7 his signed voluntary waiver as the sole basis for this issue in the
8 future.

9 MJ [Lt Col BRAUN]: The commission will take that under
10 advisement, Counsel. I do think -- well, I can tell you the
11 commission is not going to provide a prospective ruling on what may
12 or may not be sufficient based upon facts and circumstances that the
13 commission does not have before it.

14 I think it is reasonable to contemplate a scenario where
15 perhaps what may be satisfactory to the parties in one particular
16 circumstance may be unsatisfactory to the parties in a different
17 circumstance, or to the commission for that matter.

18 So while I appreciate the attempt to try and streamline
19 things as much as procedurally makes sense, I don't think the
20 commission is in a position to or desires to provide a ruling laying
21 down a way ahead, especially given the importance of the waiver we're
22 discussing and the importance of ensuring that the accused always is
23 fully aware of the right to be present at his commission and is

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 making a voluntary, intelligent, and knowledgeable waiver of that
2 right.

3 So the commission will take that under advisement, but at
4 this time I would not anticipate getting a ruling waiving the need
5 for testimony to support such a document or a declaration to support
6 such a document. And we'll have to address those situations on a
7 case-by-case basis. At least as we sit here right now, I think that
8 would be a fair expectation of the parties.

9 Anything further, Trial Counsel?

10 TC [Lt Col GOEWERT]: No, Your Honor. Thank you.

11 MJ [Lt Col BRAUN]: Okay.

12 Defense Counsel, anything further before we move into 0106?

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

14 MJ [Lt Col BRAUN]: Okay. So, Defense, as you bear burden in
15 0106, as discussed yesterday, I'm going to open with you for the open
16 portion of your argument. Please feel free to position yourself in
17 the courtroom, and then proceed when you're ready.

18 DDC [Capt TRULL]: Good morning, Your Honor. May it please
19 the court.

20 Continuing the argument from yesterday, the Manual for
21 Military Commissions, as well as the Supreme Court ruling in Hamdan,
22 make clear that the procedures and rules applicable to military
23 commissions are those that are used in trial by general

1 courts-martial, except where otherwise stated in the law or where the
2 unique circumstances of the conduct of military and intelligence
3 operations during hostilities or by other practical needs exists.

4 Regarding the pretrial punishment credit that was asked for
5 in defense motion, there are no unique circumstances that would
6 justify this commission diverging from the rules used in
7 courts-martials.

8 Title 10 U.S.C. 813, Article 13 to the Uniform Code of
9 Military Justice states: No person, while being held for trial, may
10 be subjected to punishment or penalty other than arrest or
11 confinement upon the charges pending against him. Nor shall the
12 arrest or confinement imposed upon him be more rigorous than the
13 circumstances required to ensure his presence. But he may be
14 subjected to minor punishment during that period for infractions of
15 discipline.

16 The Court of Appeals for the Armed Forces has held that
17 whether an accused has been subjected to pretrial punishment is a
18 finding of law and must be answered by the military judge. This is
19 also not a new issue for the commissions.

20 In the case of Majid Khan, the military judge held that the
21 commission has the inherent authority to grant a remedy in the form
22 of administrative sentencing credit for any abusive treatment
23 amounting to pretrial punishment, especially when no other remedy is

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 available. In fact, this commission has previously issued sentencing
2 credit as relief for discovery violations by the government at
3 AE 0054.005 (TJ).

4 Your Honor, that concludes my portion regarding the law for
5 pretrial punishment. I do have a summation for my entire argument
6 regarding both what was addressed yesterday in an unclass version
7 unless you have any questions.

8 MJ [Lt Col BRAUN]: I don't have questions with regard to the
9 credit portion of the argument, so you can proceed into your
10 summation. Thank you.

11 DDC [Capt TRULL]: This commission has the authority to issue
12 any administrative sentencing credit for incidents of pretrial
13 punishment it finds Mr. Nurjaman has experienced. As already stated
14 yesterday, we discussed how the restraints used on Mr. Nurjaman do
15 constitute punishment as opposed to a valid government objective.

16 Under the current circumstances, these shackles have no
17 valid justification. And when considered with the dignitary harms
18 that we discussed yesterday, and that would -- and the additional
19 harms that would come as any proposed alternatives suggested by the
20 government, it is clear that these do constitute pretrial punishment.

21 So if the commission finds that it lacks the authority to
22 change the standard operating procedures of the JTF in the ELC or
23 elsewhere, it has the authority to issue this pretrial punishment

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 credit on the back end. It would be in the form of administrative
2 sentencing credit against any future sentence imposed for the
3 pretrial punishment of Mr. Nurjaman.

4 MJ [Lt Col BRAUN]: Thank you, Counsel.

5 Trial Counsel?

6 ATC [Maj MILTON]: Thank you, Your Honor.

7 Earlier this morning the government marked AE 0106.014.
8 Those contain documents concerning the medication that was prescribed
9 to the accused, as well as a medication that was found in his cell
10 that has been the subject of this litigation, Your Honor.

11 MJ [Lt Col BRAUN]: Okay. And, Counsel, let's -- can you
12 provide a working copy to the bench? I have one.

13 I believe you had stated on the record that defense counsel
14 has been previously provided a copy of AE 0106.014?

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

16 MJ [Lt Col BRAUN]: Okay. And this is a four-page document
17 bearing the dates -- dates on page 1. It looks like it's in three
18 positions of 2024/08/27.

19 Defense Counsel, do you object to the commission
20 considering, or are there any matters you'd like to place on the
21 record as it pertains to the commission considering AE 0106.014 in
22 ruling upon the defense motion?

23 DDC [Capt TRULL]: Yes, Your Honor. As an initial matter, the

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1 defense would object to these as cumulative. The government has
2 already put into evidence in their response at AE 0106.002 documents
3 along the same lines of things that were found that they considered
4 to be contraband.

5 Additionally, these documents were just provided to defense
6 in discovery on Friday, 20 June. And they were the only documents.
7 We don't have any of the DIMS records or surrounding documents for us
8 to verify and make informed argument about the weight that the
9 commission should give to these or the other circumstances
10 surrounding them.

11 MJ [Lt Col BRAUN]: Defense Counsel, did you file a motion or
12 otherwise request from the government additional discovery as it
13 pertains to this particular exhibit?

14 DDC [Capt TRULL]: Your Honor, we have filed numerous
15 discovery requests with the government to have all of the records
16 pertaining to Mr. Nurjaman, and they have a continuing obligation to
17 provide those as they are given to them. We did not file a specific
18 request for these.

19 MJ [Lt Col BRAUN]: Okay. Trial Counsel, let's address
20 defense counsel's concern regarding additional information as
21 pertains to what is contained in 0106.014.

22 ATC [Maj MILTON]: Yes, Your Honor. In the defense's reply at
23 AE 0106.003, they included in their Attachment B a DIMS record that

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 is directly on point with one of the documents that the government's
2 provided in this exhibit. The document provided by the government
3 just provides ----

4 MJ [Lt Col BRAUN]: Which -- Counsel, which of the two?

5 ATC [Maj MILTON]: It would have been the -- page 1 and 2,
6 sir ----

7 MJ [Lt Col BRAUN]: Okay.

8 ATC [Maj MILTON]: ----- which is the medical -- the
9 medication that was prescribed to the accused.

10 MJ [Lt Col BRAUN]: Okay.

11 ATC [Maj MILTON]: This is just the documentation that would
12 go with the DIMS record in the defense's reply.

13 Also contained within the defense's reply is their
14 accusation that the medication that was provided in October was the
15 same medication that was later found in the accused's cell in May of
16 this year. The government's providing the record of the seizure of
17 the contraband, which has a different -- sorry, I'm blanking on the
18 word, but a different name for the prescription, basically -- not
19 prescription, but different name of the medication that was found.

20 MJ [Lt Col BRAUN]: Okay. While I do agree with defense and
21 your objection that this information is somewhat cumulative, it
22 actually does relate back to what trial counsel directed the
23 commission's attention to in attachment to your reply.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 The commission does find that there is some value to this
2 information, and understanding the basis or the standard for
3 relevance is rather low, the commission does find that this
4 information does -- the information contained in 0106.014 does
5 provide further context through which the commission can understand
6 the defense's reply and, frankly, the government's response to the
7 defense motion to some extent as well.

8 So the commission does find that it is relevant to its
9 consideration of the defense's original filing at 0106.001. And the
10 commission will receive and will consider 0106.014 in determining its
11 ruling based upon the defense request.

12 So I'm going to -- I understand your objection, Counsel.
13 The commission will give the material, of course, the weight that it
14 sees it -- it feels it deserves but it is going to consider them in
15 context of ruling upon the motion. So I'm going to overrule your
16 objection to the commission considering that for purposes of this
17 motion.

18 Trial Counsel, is there any -- I'm sorry. Defense Counsel?

19 DDC [Capt TRULL]: Understanding the commission's ruling, Your
20 Honor, you previously stated you were not inclined to give rebuttal.
21 Given that she is going to be addressing on new matters before the
22 commission, would you give me the chance to briefly respond after
23 trial counsel's argument today?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [Lt Col BRAUN]: Defense Counsel, I'll let you get a
2 comment in as it pertains to this particular document. I'm going to
3 ask that it be very specifically scoped to that document. If there's
4 some context that the defense feels is helpful, I'll consider that.
5 I think that is appropriate, though.

6 The commission does note that you have had these documents
7 at least since Friday, so the commission would have assumed they
8 would have been worked into your argument. But I'll give you a brief
9 opportunity to address any additional matter that you feel is
10 necessary.

11 Trial Counsel, is there anything additional we need to mark
12 before you go into your argument in support of your response to the
13 defense motion?

14 ATC [Maj MILTON]: No, Your Honor.

15 MJ [Lt Col BRAUN]: Okay. Very well, then. Please proceed
16 with your argument when you're ready.

17 ATC [Maj MILTON]: Thank you. The government is requesting
18 that the commission continue to defer to the detention operators when
19 it comes to the appropriate manner of restraint involving the
20 accused.

21 As a threshold matter, case law is clear that courts should
22 defer to the experts when it comes to detention operations. We are
23 in a slightly different scenario only because the JTF commander has

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 placed with this commission a slightly expanded area of discretion in
2 terms of attorney meetings, these attorney meetings that are
3 occurring during commission sessions when those attorney meetings
4 occur at the ELC. This granted discretion exists at no other time
5 and no other place.

6 The defense conflates 7-1-6.e., paragraph (1), and believes
7 this SOP provision gives the commission the ability to modify the
8 restraints at any time and any place for legal meetings. This is an
9 incorrect statement when reading the entirety of 7-1-6.e.

10 Each location is broken out separately. There is only one
11 location, and only during commission sessions, that a court order can
12 modify the restraint level during legal meetings.

13 However, the commission is under no obligation to exercise
14 this limited discretion. If the commission does not, then the
15 JTF commander will continue to exercise his responsibilities in
16 ensuring that all parties, the accused, their attorneys, and his
17 staff members, are as safe as possible while still allowing the
18 accused to meet and interact directly with his counsel.

19 The defense has presented no evidence that their ability to
20 have attorney-client meetings is impacted to such an extent that the
21 commission needs to interfere with this -- with the detention
22 operations.

23 If detainees who refuse to meet with their attorneys due to

1 physical searches was not sufficient for the court to intervene in
2 detainee policy, as described in Hatim v. Obama, then a personal
3 preference from the accused is not sufficient to justify intervention
4 in this case.

5 Even the claims of medical concerns raised by the defense
6 are refuted by the JTF commander, who consulted with his medical
7 staff concerning this complaint, and found no evidence to support
8 medical necessity. However, the JTF commander did offer an
9 accommodation that would alleviate, to the extent that it exists,
10 this medical concern by allowing the accused to meet with his
11 attorneys without restraint with a partition.

12 All other detainees who are not facing capital charges are
13 meeting with their attorneys at the same level as the accused.

14 And, Your Honor, in regards to no right to pretrial
15 punishment credit, detainees -- the defense is required to show an
16 expressed intent to punish on the part of detention facility
17 officials. Bell v. Wolfish summarizes the situation well. There are
18 no inherent instances that the detainee's understandable desire to
19 live as comfortably as possible, with as little restraint as possible
20 during confinement, does not convert the conditions or restrictions
21 of detention into punishment. Restraints that are reasonably related
22 to the institution's interest to maintaining security, without more,
23 do not constitute punishment.

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1 Thank you, Your Honor.

2 MJ [Lt Col BRAUN]: Thank you, Counsel.

3 Defense Counsel, do you want to respond or provide
4 additional context to the -- to 0106.014?

5 DDC [Capt TRULL]: Very briefly, Your Honor.

6 MJ [Lt Col BRAUN]: Please proceed.

7 DDC [Capt TRULL]: Your Honor, first, I would like to point
8 out that the contraband at issue, the so-called medication, is a
9 Vitabiotic Osteocare pill. It's a vitamin supplement. Upon
10 information and belief by the defense team, nothing has been provided
11 to Mr. Nurjaman except through the JTF-approved processes. We have
12 routinely, as supported in the DIMS attached to our filing and
13 response, given him supplements that were approved and given to him
14 by the JTF.

15 This record, as of May 24, 2025, shows that maybe their
16 policies have changed and they are now designating that contraband,
17 but that is not a justification for Mr. Nurjaman to remain shackled.
18 Using this as a justification goes back to the exact issue I brought
19 up yesterday, that they are punishing him for other violations in the
20 form of shackles continuously, consistently. It is not simply the
21 baseline, as Major Milton indicated yesterday in her argument. And
22 therefore, we would ask the commission to disregard this or give it
23 the minimal weight when deciding whether or not it justifies the

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 purported government interest of security concerns.

2 MJ [Lt Col BRAUN]: Thank you, Defense Counsel.

3 As noted earlier, the commission will consider 0106.014 in
4 ruling upon the defense motion.

5 Counsel, I believe that addresses the matters that the
6 commission had desired to address. Are there any additional matters,
7 then, that we can take up before this commission recesses for the
8 week?

9 TC [Lt Col GOEWERT]: No, Your Honor. Thank you.

10 MJ [Lt Col BRAUN]: Defense Counsel?

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

12 MJ [Lt Col BRAUN]: Very well then. This commission stands in
13 recess.

14 **[The R.M.C. 803 session recessed at 1024, 26 June 2025.]**

15 **[END OF PAGE]**