**[The R.M.C. 803 session was called to order at 0906, 11 December 2024.]**

MJ [COL FITZGERALD]: This commission is called to order.

Captain Stinson, good morning. Could you identify who is here on behalf of the United States and indicate whether they are located here or appearing remotely from the Remote Hearing Room in the National Capital Region.

TC [CAPT STINSON]: Yes, Your Honor, good morning. These proceedings are being transmitted via CCTV to public viewing locations in the United States pursuant to this commission's order AE 028M dated 22 November 2019.

Representing the United States here in Guantanamo Bay Naval Station are the following detailed counsel: Myself, Captain Tim Stinson, United States Navy; Mr. John Wells; Lieutenant Colonel James Garrett, United States Army; Major Jonathan Danielczyk, United States Air Force; Lieutenant Lauren Huston, United States Navy; Captain Kyle Lanning, United States Marine Corps; and Captain Alfonso Perez-Diaz, United States Army.

In addition, Your Honor, we're assisted both here and in Northern Virginia at the Remote Hearing Room by paralegals and intelligence analysts who are appropriately cleared for presence in the courtroom.

Do you want me to list those individuals as well or just

counsel?

MJ [COL FITZGERALD]: Just counsel is fine. Thank you.

TC [CAPT STINSON]: Thank you, Your Honor.

MJ [COL FITZGERALD]: I appreciate that.

TC [CAPT STINSON]: Your Honor, all members of the prosecution team have been detailed to this military commission by the chief prosecutor of the Office of Military Commission. All members of the prosecution team are detailed and qualified under Rules for Military Commission 502 and 503 and have been previously sworn under Rule 807.

No member of the prosecution team has acted in any manner which might tend to disqualify them from these proceedings.

All counsel are here, Your Honor, and there are no new counsel for the prosecution.

MJ [COL FITZGERALD]: Thank you, Captain Stinson.

TC [CAPT STINSON]: All right. Thank you.

MJ [COL FITZGERALD]: Good morning, Defense. Ms. Miller, it appears you might be going to the podium. Is that -- okay. You're fine. I'll wait until you get there.

LDC [MS. MILLER]: Good morning, sir.

MJ [COL FITZGERALD]: Good morning.

LDC [MS. MILLER]: I am Allison Miller, appearing on behalf of Abd al Rahim al Nashiri. I am joined by Lieutenant Colonel Joshua Nettinga, United States Air Force; Commander Matthew Bartholomaus,

United States Navy; Linguist [redacted]; Katie Carmon, civilian; Joaquin Padilla, civilian; Lieutenant Ben Shaver of the United States Navy.

We also are joined by several paralegals and analysts here in person. And in the RHR, we also have several lawyers joining us this morning: Major Ken Hynes of the United States Air Force; Susie Hensler; and Chief Defense Counsel Brigadier General Jackie Thompson.

MJ [COL FITZGERALD]: Can you give me those names again? I'm sorry. I heard General Thompson, but the other two names.

LDC [MS. MILLER]: Just the ones from the RHR, sir?

MJ [COL FITZGERALD]: Yes.

LDC [MS. MILLER]: Major Ken Hynes, United States Air Force, and Susie Hensler.

MJ [COL FITZGERALD]: And who are they?

LDC [MS. MILLER]: They are both resource counsel.

MJ [COL FITZGERALD]: Thank you.

LDC [MS. MILLER]: I'm reminded that everyone possesses the requisite clearance to be in the courtroom or the RHR, and obviously we have several new folks that need to take the oath before Your Honor this morning.

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

MJ [COL FITZGERALD]: Thank you, Ms. Miller.

So Counsel, as a reminder, my expectation regarding the use

of the Remote Hearing Room is that the RHR is an extension of the well of the courtroom. Therefore, the only personnel authorized to be in the RHR during hearings of this commission are those individuals that would be permitted to sit in the well of this courtroom. That would include the members of each respective team and their consultants as well as chiefs of OCP and MCDO.

Anyone who would not ordinarily be authorized to sit in the well of this courtroom ----

INT: Excuse me, Your Honor. This is the interpreter. We're having a hard time understanding you. Please bring the microphone closer to your mouth.

MJ [COL FITZGERALD]: I can do that.

INT: Thank you.

MJ [COL FITZGERALD]: Thank you.

Anyone who would not ordinarily be authorized to sit in the well of this courtroom are not authorized to view the proceedings from the Remote Hearing Room.

The parties understand my guidance on the use of the RHR?

TC [CAPT STINSON]: Yes, Your Honor.

LDC [MS. MILLER]: Yes, sir.

MJ [COL FITZGERALD]: Very well.

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

MJ [COL FITZGERALD]: Counsel, since -- I think you said this,

but just to be clear, are these proceedings being transmitted by closed-circuit TV to the United States in compliance with the commission's orders to that effect?

TC [CAPT STINSON]: That's correct, Your Honor.

MJ [COL FITZGERALD]: And I would note that Mr. Nashiri is present today.

Good morning, Mr. Nashiri. So Mr. Nashiri, I will now advise you of your right to be present and to waive said presence.

You have the right to be present during all sessions of the commission. If you request to be absent -- if you request to absent yourself from any session, such absence must be voluntary and of your own free will. Your voluntary absence from any session of the commission is an unequivocal waiver of the right to be present during that session.

Your absence from any session may negatively affect the presentation of the defense in your case. Your failure to meet with and cooperate with your defense counsel may also negatively affect the presentation of your case.

Under certain circumstances, your attendance at a session may be required regardless of your personal desire not to be present.

Regardless of your voluntary waiver to attend a particular session of the commission, you have the right at any time to decide to attend any subsequent session. If you decide not to attend the

morning session, but wish to attend the afternoon session, you must notify the guard force of your desires.

Assuming there is enough time to arrange transportation, you will then be permitted to attend the afternoon session. You will be informed of the time and date of each commission session prior to the session to afford you the opportunity to decide whether you wish to attend that session.

Mr. Nashiri, do you understand what I just explained to you?

ACC [MR. AL NASHIRI]: **[Speaking in English]** Yes. Yes.

MJ [COL FITZGERALD]: Mr. Nashiri, I want to go over your counsel rights with you at this time.

Pursuant to the Manual for Military Commissions, as of now, you are represented by Lieutenant Colonel Nettinga, Mr. Padilla, and Ms. Carmon, your detailed defense counsel. Do you understand this?

ACC [MR. AL NASHIRI]: **[Speaking in English]** Again, sorry?

INT: Can you please repeat, please?

MJ [COL FITZGERALD]: So currently, the attorneys we have on record are Lieutenant Colonel Nettinga, Mr. Padilla, and Ms. Carmon. I know you have other attorneys here before you, but they have not made their appearance on the record.

ACC [MR. AL NASHIRI]: Yes. Yes. I understand that.

MJ [COL FITZGERALD]: Detailed counsel are provided to you free of charge. Do you understand that?

ACC [MR. AL NASHIRI]: **[Speaking in English]** Yes.

MJ [COL FITZGERALD]: At our last hearing we discussed your agreement to release Lieutenant Commander Piette, which I subsequently granted. Do you have any questions about that?

ACC [MR. AL NASHIRI]: No. No. I don't have any questions.

MJ [COL FITZGERALD]: And today we are going to finalize the addition of Captain -- I'm sorry, of Commander -- I'm going to say Bartholomaus; is that accurate?

DC [CDR BARTHOLOMAUS]: Yes, Your Honor.

MJ [COL FITZGERALD]: Thank you. If I get it wrong -- I think I heard it with an extra syllable at one point, and I'm trying to disengage that memory. And Lieutenant Shaver, who have been detailed as military counsel to your defense team.

Do you understand that they've been detailed to your team?

ACC [MR. AL NASHIRI]: Yes.

MJ [COL FITZGERALD]: Commander Bartholomaus, could you please announce your qualifications and detailing for the record.

DC [CDR BARTHOLOMAUS]: Yes, Your Honor. And good morning.

MJ [COL FITZGERALD]: Good morning.

DC [CDR BARTHOLOMAUS]: I'm Commander Matthew Steven Bartholomaus, Judge Advocate General Corps, United States Navy. I've been detailed to this commission by the Chief Defense Counsel, the Office of Military Commissions, Brigadier General Jackie Thompson

Jr., pursuant to R.M.C. 502 and 503.

I previously have been sworn and certified under Article 27B and Article 47A of the Uniform Code of Military Justice, though, of course, we're pending R.M.C. 807. I have not acted in any manner that might tend to disqualify me in this matter.

Thank you, Your Honor.

MJ [COL FITZGERALD]: Thank you.

Lieutenant Shaver, could you please announce your detailing qualifications for the record?

DC [LT SHAVER]: Yes, Your Honor. I am Lieutenant Ben Shaver of the U.S. Navy JAG Corps. I've been detailed to this commission by General Thompson, the Chief Defense Counsel of the Office of Military Commissions.

I am qualified under R.M.C. 502 and 503, and I have been previously sworn and certified under Article 27B and Article 47A of the UCMJ, R.M.C. 807 pending. And I have not acted in any manner that might tend to disqualify me in this matter.

MJ [COL FITZGERALD]: Thank you, sir.

Mr. Nashiri, I want to next go over your right to learned counsel with you at this time.

Pursuant to the Military Commissions Act of 2009, you're entitled to the greatest extent practicable to be represented by at least one counsel who is learned in the law relating to capital cases

pursuant to Rule for Military Commissions Rule 506(b) and that learned counsel will be provided to you free of charge.

Since 2019 Mr. Anthony Natale has been filling that role in your case, and he was recently released from this case so that he could retire from the practice of law. We addressed that issue in our last session in August.

Do you have any questions about Mr. Natale's release?

ACC [MR. AL NASHIRI]: No, I have nothing.

MJ [COL FITZGERALD]: And, sir, as we discussed last session, Ms. Allison Miller, who -- was expected to take over as the role of learned counsel for you. Since that time, her hiring process was completed. She has the necessary security clearances. She has been formally detailed to your case. And in a minute I'm going to have Ms. Miller place her detailing and qualifications on the record.

Do you have any questions about Ms. Miller's detailing in this case?

ACC [MR. AL NASHIRI]: No, I have nothing.

MJ [COL FITZGERALD]: Ms. Miller, could you please announce your detailing qualifications for the record?

LDC [MS. MILLER]: Yes, sir. I am Allison Miller, learned counsel for Abd al Rahim al Nashiri. I have been detailed to this military commission by Brigadier General Jackie L. Thompson, Chief Defense Counsel. My detailing document is reflected in AE 339ZZ, and

it was filed on 29 October 2024.

I am a civilian attorney. I am qualified under Rule for Military Commissions 502(d), and I have prepared a list of my qualifications for this commission and Mr. Nashiri's consideration.

My career began at the Office of the Public Defender in Tallahassee. My husband and I relocated to the Tampa Bay area, where I began working at the public defender's office, the Sixth Judicial Circuit of Florida, covering Pinellas and Pasco Counties. I was there 13 years, the last 10 of which were almost primarily devoted into the defense of capital defendants.

I resigned from the public defender's office in 2021 -- excuse me -- to run for state attorney, which is Florida's equivalent of DA, for the Sixth Judicial Circuit. I continued to defend capital cases while running for the office of state attorney, employed with the law firm of Ripley Whisenhunt PLLC.

I defended four capital cases in trial and served as a legal consultant on the State of Florida v. Nikolas Cruz while running for state attorney.

I have defended approximately 80, 8-0, cases where the defendant was indicted for capital first-degree murder and faced the possible imposition of the death penalty. Of those 80 cases, the vast majority have resolved with either a negotiated plea or a waiver of the death penalty.

The majority of those 80 cases have been in state court in Florida. However, I have also defended or consulted on capital cases in state court in Alabama, Georgia, South Carolina, North Carolina, Louisiana, Arizona, California, Pennsylvania, Idaho, and federal jurisdictions.

I have tried 10 capital jury trials as lead or co-counsel. I have tried one capital bench trial as co-counsel. I have served as a legal consultant, typically as an area -- excuse me -- typically as an expert in capital jury selection in another 10 capital trials, jury trials.

My involvement in those additional 10 capital jury trials varied in range from either notetaking and the development of voir dire strategy to actually questioning the prospective jurors.

I am primarily a trial lawyer, certainly, but I also represent capital defendants in all other proceedings between indictment and execution, specifically post-conviction proceedings, federal habeas clemency, and warrant litigation.

I am considered a subject matter expert in capital jury selection. I have been a member of the National College of Capital Voir Dire since 2017. I work with individual capital teams across the country on how to effectively and constitutionally select a capital jury.

I also planned and served as faculty for the Florida Public

Defender's Association Annual Capital Conference as well as the FPDA's capital jury selection training while I was employed as a public defender in Florida.

I am a member of the Faculty of the National Association of Criminal Defense Lawyers capital case legal initiative that hosts two conferences annually and provides continuing training and technical assistance to capital teams nationally.

I also lecture at NACDL's annual capital conference. This year I lectured in New Orleans related to the subject matter of neuroimaging, of which I am also considered a subject matter expert.

I have served as faculty and lectured at capital conferences in Florida, Arizona, Colorado, California, Georgia, Nevada, and Utah.

I am a member in good standing of the Florida Bar. I have not previous -- I have not been previously sworn pursuant to Rule 807, and I have not acted in any way that would tend to disqualify me from these proceedings.

Thank you, sir.

MJ [COL FITZGERALD]: Thank you, Ms. Miller.

Mr. Nashiri, I understand the last few days you have been meeting with Ms. Miller and the members of your defense team?

ACC [MR. AL NASHIRI]: **[Speaking in English]** Yes.

MJ [COL FITZGERALD]: And you have met with Ms. Miller on previous occasions as well?

ACC [MR. AL NASHIRI]: **[Speaking in English]** Yes. Yes.

MJ [COL FITZGERALD]: Have you had sufficient time to meet with Ms. Miller to at least decide whether you want to be represented by her as your learned counsel?

ACC [MR. AL NASHIRI]: Yes.

MJ [COL FITZGERALD]: Do you wish to be represented by Ms. Miller as your learned counsel?

ACC [MR. AL NASHIRI]: Yes.

MJ [COL FITZGERALD]: Thank you, Mr. Nashiri.

Any counsel has not been previously -- who has not previously been sworn, please rise.

**[Counsel was sworn.]**

MJ [COL FITZGERALD]: Thank you. Please be seated.

And just for the record, I'm going to summarize some R.M.C. 802 conferences we held.

The commission held an R.M.C. 802 conference with the parties on 29 October 2024. During that conference we discussed the following issues:

One, that the parties informed the court of their discussion related to availability and scheduling for this December session.

Two, the commission was updated on Ms. Miller's status, which included that she was working pending her security clearance, and that she had not yet been paid.

Just so I can break from that for a moment, I understand your pay issues have been resolved, Ms. Miller?

LDC [MS. MILLER]: Yes, sir. I've been paid three times.

MJ [COL FITZGERALD]: Okay. Thank you.

Three, discussed with the parties generally scheduling with -- discussed with the parties generally scheduling matters for upcoming sessions and discussions between the parties in that regard.

And, finally, we discussed the availability of the former Camp VII commander for this session, but I understand we're now more concerned with his availability in January; is that accurate?

TC [CAPT STINSON]: That's correct, Your Honor.

MJ [COL FITZGERALD]: Okay.

Does counsel have anything else they would like to add to my summary or any objections they would like to make to the 29 October 2024 802 session.

TC [CAPT STINSON]: No additions or objections from the government, Your Honor.

MJ [COL FITZGERALD]: Defense?

LDC [MS. MILLER]: No additions or objections for the defense.

MJ [COL FITZGERALD]: Thank you.

The commission also held an R.M.C. 802 conference with the parties on 5 December 2024. During that conference we discussed the following issues:

The commission informed the government of a need for an M.C.R.E. 505 presentation during the upcoming session, either Tuesday afternoon or Wednesday. We decided on Wednesday, but due to some technical issues, we're pushing that to Friday.

The government is aware of that?

TC [CAPT STINSON]: The government is aware, yes, Your Honor.

MJ [COL FITZGERALD]: Okay. Thank you.

The defense discussed Mr. Nashiri's health issues related to vertigo and a new diagnosis which may require either a CAT scan or an MRI, some type of further imaging, to see if that can pinpoint the issue for resolution. The government agreed they would assist in procuring this imaging equipment and its use as necessary. Is that accurate?

TC [CAPT STINSON]: Your Honor, the government has agreed to assist in relation to a request for a CAT scan. The one objection -- I'm not certain that there's been a diagnosis of vertigo. I know there was some question about whether or not that's the ----

MJ [COL FITZGERALD]: Oh.

TC [CAPT STINSON]: ---- correct diagnosis or not, and we advised that we would provide assistance to make sure they routed whatever medical tests that they wanted to have done through the right channels.

MJ [COL FITZGERALD]: Okay. Thank you, Government.

Defense, that's your understanding as well?

LDC [MS. MILLER]: Being a bit semantical, the symptom is vertigo. What we are exploring is what is the cause of that. I think we had previously had an understanding that the cause was "X" when perhaps it is "Y." And that necessitates the CT or the MRI scan to properly diagnose the cause so that we can hopefully treat it if treatment is available beyond the medication regiment that we're doing now.

Captain Stinson was kind enough to reach out to LSS and get us the information about how to pursue that special request. We have submitted that special request with documentation from a medical doctor.

MJ [COL FITZGERALD]: Okay. Thank you.

Also discussed was, the defense indicated they did not want to call the witnesses regarding Appellate Exhibit 573 during this session. The government indicated all the witnesses would be available during the January session. So the commission agreed to move the witnesses to the January session.

Is that an accurate summary of that?

TC [CAPT STINSON]: Yes, Your Honor.

MJ [COL FITZGERALD]: Okay.

LDC [MS. MILLER]: Yes, sir.

MJ [COL FITZGERALD]: Thank you.

The commission discussed conducting depositions in January. We also discussed with the parties generally scheduling matters for upcoming sessions and discussions between the parties in that regard. I think it was me who mentioned we needed to deconflict witnesses and other RHR use with the KSM commission, which will also be in session in January.

And then agree to hear arguments on the record over whether defense Appellate Exhibit 597 should be ex parte.

Do counsel have anything else they would like to add to my summary, or any objections they would like to make to the 5 December 2024 R.M.C. 802 session?

Government?

TC [CAPT STINSON]: No objections and no additions from the government, Your Honor.

MJ [COL FITZGERALD]: Thank you.

LDC [MS. MILLER]: Nothing from the defense, sir.

MJ [COL FITZGERALD]: Very well. Thank you.

So that would lead us into our next discussion, Appellate Exhibit 597 and defense requests for ex parte, which the defense seeks to file ex parte and under seal. The government objected to that in Appellate Exhibit 593D and wanted the chance to be heard by the commission on that.

So, defense, to the extent you think you can in this forum explain why this particular matter -- or why this particular filing needs to be ex parte, could you help me understand it? Would you like to use the podium?

LDC [MS. MILLER]: Sure.

MJ [COL FITZGERALD]: Thank you.

LDC [MS. MILLER]: It's honestly easier than hitting the button.

We would like to make the commission aware of some issues we're facing moving forward towards resolution in this case. The reason why I believe that it necessitates an ex parte hearing with Your Honor is because I am going to discuss strategical decisions that I am making that I do not believe the government is privy to.

Most of the information Captain Stinson and I have discussed, and certainly in the course of this ex parte session, if the court -- if the commission were inclined to grant it and determines that it's not appropriately ex parte, we understand that it would be then discussed with the government.

Again, largely I believe the government is aware of the issues that we are facing. It is the strategic decisions and calls that I think necessitate the ex parte hearing with Your Honor, and I think it prudent to address them now at the earliest stage possible with a trial date 6 October 2025.

MJ [COL FITZGERALD]: Thank you. Defense -- I mean, Government, would you like to be heard?

TC [CAPT STINSON]: Just briefly, Your Honor. The government's concern relates to, again, in August, we had a couple of ex parte filings from the defense. It ended up being an extended multiple-day ex parte session. I understand the reasons for that.

The government's concern is with the trial date, if there are specific strategic matters that the defense needs to talk to the judge about, I think in your discretion you can grant an ex parte session. The government requests that be as limited as possible because if it is matters that may impact the trial schedule, in particular the 6 October trial date, the government would have significant concerns about that portion of the discussion occurring during an ex parte session, Your Honor.

MJ [COL FITZGERALD]: Thank you.

TC [CAPT STINSON]: Thank you, Your Honor.

MJ [COL FITZGERALD]: Thank you, Government.

Ms. Miller, do you have any response to that?

LDC [MS. MILLER]: I agree with Captain Stinson ----

MJ [COL FITZGERALD]: Okay.

LDC [MS. MILLER]: ---- requesting just to discuss the strategic matters ex parte. Otherwise, the government has been apprised of the information that I think is relevant to the strategic

decisions we will be discussing with the commission. And, again, if anything seems prudent in the course of that hearing for the government to be made privy to it, we understand that that would be the commission's purview.

MJ [COL FITZGERALD]: Okay.

TC [CAPT STINSON]: Your Honor, just a real brief addition.

And so I understand what -- the strategic discussions. We do note there were two filings. Obviously, they were ex parte. One's listed as classified, and if -- to the extent that the discussions are in relation to matters like discovery or those type of discussions, again, the government does believe it should be privy to those type of discussions.

That's all in addition, Your Honor. Over.

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

MJ [COL FITZGERALD]: All right. I understand the government's concerns. And I think the defense understands they're limited to things they need to inform me of that are related just to their strategic decision-making that they want to bring to my attention. And I think they would be cognizant that they may be -- they may be reminded, why can't we discuss this in open session?

So if I feel like they're going astray of what I'll allow an ex parte proceeding for, I'll certainly let them know that. And I'm

hoping to limit the amount of time we need to spend in ex parte. I just don't know yet.

But, Ms. Miller, let me also ask, this is -- is this going to be related to the previous ex parte sessions or ex parte filings?

LDC [MS. MILLER]: I don't believe so, sir.

MJ [COL FITZGERALD]: Okay. So you mentioned, though, so I figured I'd better ask, but I didn't think they would. And if it is, then we'll certainly need to take that up if it becomes related.

So I'm going to grant them an ex parte filing for the matters that relate to their strategic decision-making, noting that we do have a current trial date of 6 October 2025. So -- but bear with me one moment.

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

MJ [COL FITZGERALD]: And, Government, I'm going to try to be as circumspect as I can, but as helpful as I can the same. So the ex parte filings the court has make no requests of the court. So I don't think you'll be ambushed or surprised by anything coming out of the -- there were notices.

So I hope that's helpful to you, because I understand the government's concern as we move to a trial date.

Is that helpful?

TC [CAPT STINSON]: Thank you, Your Honor.

MJ [COL FITZGERALD]: All right.

So at this time, I am going to grant the ex parte session. But while I have the parties here, knowing the schedule and knowing we've moved the government's 505 session to Friday, is there an anticipation we will come back on the record today after that ex parte session?

Well, let me ask defense: Do you anticipate that?

LDC [MS. MILLER]: No, sir. And we are actually requesting the afternoon to be able to visit with Mr. al Nashiri.

MJ [COL FITZGERALD]: Okay.

LDC [MS. MILLER]: We were hoping ----

MJ [COL FITZGERALD]: We'll take that matter up in a second.

LDC [MS. MILLER]: Okay.

MJ [COL FITZGERALD]: Government, were you expecting to meet after this ex parte session, knowing that the only thing we had was the 505 session that we moved to Friday?

TC [CAPT STINSON]: We were prepared to be adaptable as the schedule required, but I ----

MJ [COL FITZGERALD]: Okay.

TC [CAPT STINSON]: ---- acknowledge that there's nothing else on the calendar other than the defense's ex parte session this afternoon.

MJ [COL FITZGERALD]: Okay. Thank you.

Knowing that, then we will not be coming back on the record

after the 505 session.

Now, Ms. Miller, you -- I think you were going to bring up -- I was informed by my staff that you were seeking some clarification that I can provide in what you need to meet with Mr. Nashiri after that session. And help me understand that.

LDC [MS. MILLER]: Just so there is some clarity, we were hoping to extend our visit with him past 4:30 yesterday to complete the things that we were working on, but were not able to do so. And so I know sometimes the rules fluctuate, an hour and a half after the session, not meeting with Mr. al Nashiri, but we are hopeful that we can spend at least till 4:30 this afternoon with Mr. al Nashiri.

And to the extent the court is able -- the commission is able -- excuse me -- just to put the -- we would prefer we be able to do that to facilitate our work with Mr. al Nashiri.

MJ [COL FITZGERALD]: Okay. I think I understand. So our intent today was to have a normal session going to 1630. So you would have that time with Mr. Nashiri, either in open court or to meet otherwise.

So if I can pass on to the guards, or whomever, that expectation I would like still to be met. I'm aware of what those discussions may involve and why that time is necessary. So I would ask that the time until 1630 be facilitated as if we were in open session.

I don't know if I can extend it beyond that, because that becomes a manning and resource issue that's outside of my control, and I -- and I believe I've said several times on the record and in rulings, I defer to the JTF commander when those become his responsibility, and I presume he and I see eye-to-eye that if we're not in open session, he resumes the authorities and controls pursuant to his SOP. So if it's anything beyond 1630, that would be an extraordinary relief that I'd have to take up.

LDC [MS. MILLER]: No, 1630 should be fine, sir.

MJ [COL FITZGERALD]: Okay. Thank you.

Government, I presume you have no objection to them being able to do that?

TC [CAPT STINSON]: No objection from the government, Your Honor.

MJ [COL FITZGERALD]: All right. Thank you.

So if -- I don't know who is the sergeant of the guards or who controls that, but if they could pass that message on, that -- expect Mr. Nashiri to be here with his attorneys until 1630 and not use me closing the session or putting us in recess as the benchmark for anything. 1630 is the benchmark.

Very well. And with that, then ----

I'm sorry. Government?

TC [CAPT STINSON]: Yes. Just one other matter, Your Honor.

So understanding that we're not anticipating coming back in session today, the government will be available if things go to matters in the ex parte that you do believe should be held open. So we'll be available.

MJ [COL FITZGERALD]: Okay.

TC [CAPT STINSON]: I just wanted to make sure that was clear for Your Honor.

MJ [COL FITZGERALD]: So tell you what, we'll use just kind of a general principle. If we know that, we'll try to give about an hour recall notice, to get everybody back in court within an hour.

TC [CAPT STINSON]: Understood. Thank you, Your Honor.

MJ [COL FITZGERALD]: I don't think there are very many places you can go that can't get you back here within an hour. So be flexible. If you need more time, let me know.

And just so we know, we need 30 minutes before we start our ex parte session to set up for that.

And with that, this commission is in recess.

**[The R.M.C. 803 session recessed at 0942, 11 December 2024.]**

**[END OF PAGE]**