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1 **[The R.M.C. 803 session was called to order at 1022, 08 May 2025.]**

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

3 Government, can you account for the members of the
4 prosecution?

5 TC [CAPT STINSON]: Yes, Your Honor. All members of the
6 prosecution team are present and accounted for in the same locations
7 as they were at the last session, including Lieutenant Colonel
8 Garrett up at the RHR. Over.

9 MJ [COL FITZGERALD]: Thank you.

10 Defense?

11 DC [CDR BARTHOLOMAUS]: Yes, sir. All personnel are present
12 and accounted -- accountable as we have previously reported during
13 the previous days of this session between here and the RHR. With the
14 exception of resource counsel. I apologize, Your Honor.

15 MJ [COL FITZGERALD]: No, that's fine. What I'm trying to
16 remember -- I think we had an open session -- we closed with an open
17 session yesterday, I believe.

18 DC [CDR BARTHOLOMAUS]: Yes, sir.

19 MJ [COL FITZGERALD]: And Mr. Nashiri had elected to attend
20 that from a remote location, but Mr. Nashiri is now present in the
21 hearing room today.

22 DC [CDR BARTHOLOMAUS]: Yes, he is, sir.

23 MJ [COL FITZGERALD]: Okay, thanks. I just wanted to account

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1 for that.

2 Very well. So I'll knock out the easy things first.

3 One, 802 summary. We briefly had a discussion about the
4 fact that I'm having a transition in my office, and my senior staff
5 attorney is departing close to the end of June, and there will be a
6 transition and one of the other staff attorneys will assume the
7 leadership mantle, and I gave the parties some general instruction
8 and guidance.

9 And, again, I thanked my senior staff attorney, and I hope
10 the parties will reach out and also thank him and appreciate him for
11 the fine service he's done and being a resource to you and a conduit
12 between the parties and the trial judiciary, which is probably one of
13 the most critical functions he serves on behalf of the commission.
14 So I gave the guidance on that.

15 Any need for either party to summarize more than what I said
16 about that?

17 TC [CAPT STINSON]: No additions to that portion of the
18 summary, Your Honor.

19 DC [CDR BARTHOLOMAUS]: No, sir. We concur.

20 MJ [COL FITZGERALD]: Thank you.

21 The next thing is -- and I -- again, I repeat that I'm not
22 looking for substantive information, but I have a motion to abate
23 marked as Appellate Exhibit 622, and a motion to dismiss marked as

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1 Appellate Exhibit 621 that are still in the pleading cycle. I don't
2 recall the dates the responses are due from the government.

3 TC [CAPT STINSON]: It's the 13th and 14th, Your Honor.

4 MJ [COL FITZGERALD]: Okay. So next week?

5 TC [CAPT STINSON]: Yeah, that's correct, Your Honor.

6 MJ [COL FITZGERALD]: Okay. Here's what I'd like to know.

7 Obviously, since I've canceled the July and August hearings, is
8 either party anticipating that they were going to call witnesses and
9 need a hearing for either of those motions?

10 Defense, they're your motions, so let me start with you. Is
11 that Ms. Miller?

12 LDC [MS. MILLER]: Yes, sir. Tell me again. I'm sorry, which
13 two motions?

14 MJ [COL FITZGERALD]: The motion to abate, which I -- involves
15 the chief defense counsel, that question. And then the motion to
16 dismiss, I believe, was about the panel venire. If I'm wrong, please
17 correct me, but that's -- I don't think I got those inversed.

18 LDC [MS. MILLER]: I do not anticipate calling witnesses for
19 either motion.

20 MJ [COL FITZGERALD]: Okay. Government?

21 TC [CAPT STINSON]: The government doesn't anticipate
22 witnesses being needed and believes it will be able to rule on the
23 papers, the commission may be able to rule on the papers on those.

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1 MJ [COL FITZGERALD]: I appreciate that. I just, again,
2 wanted to know if we needed to allot time for that, again, knowing
3 that we likely wouldn't have a hearing until November. So thank you
4 for that information.

5 LDC [MS. MILLER]: And I believe we had agreed that the
6 commission could rule on the papers on the motion for abatement
7 related to the acting chief defense -- purported acting chief defense
8 counsel, and I believe Lieutenant Colonel Nettinga is handling what I
9 call the quorum motion. And I believe he did request oral argument
10 on that motion. But again, not anticipating witnesses.

11 MJ [COL FITZGERALD]: Okay. Thank you. And, again, I realize
12 I'm jumping the gun, but I'm just trying to anticipate procedurally
13 how we're going to go forward. So probably that question is more for
14 the government since they -- their responses aren't due. I think I
15 have that information that's going to be helpful at least for
16 planning purposes for the commission and the judiciary. So thank you
17 for that.

18 The next thing I'd like to do is -- I've already told the
19 parties there's a forthcoming pretrial order, and I've given some
20 rough sketch guidelines, and I'm going to give a little bit more so
21 maybe it's helpful. Again, just for expectation management.

22 As I stated, Government, your notices are due at the end of
23 June so that it can facilitate the defense understanding what motions

1 they need to file based on notices. All motions are due...

2 **[Pause.]**

3 MJ [COL FITZGERALD]: Sorry. Sorry, let me make sure I'm
4 clear. 30 June 2025 is when the government notices are due. Motions
5 are due 6 October 2025, which will allow the pleading cycle to
6 complete by the end of October. And we will take up all those
7 matters in the November and December hearings.

8 I'm well aware the first thing probably people are thinking
9 is, well, what if we don't conclude them? There will be some
10 opportunities for hearings most likely in February, March, April, and
11 May.

12 So we have time built into 2026. But what I would do is ask
13 the parties to ensure that any witnesses they intend to call in their
14 motions, tell them they need to make themselves available at the
15 dates we have scheduled for hearings or consider alternate forms of
16 testimony if they can't present live testimony.

17 As the parties are seasoned litigators, I'm sure you're
18 already thinking through all the things that are due to the parties,
19 including the commission, that I haven't spoken to. I'm only mostly
20 speaking to motions.

21 But one other thing I'd like the parties to contemplate over
22 the summer, because it will take some conferencing, is a likely date
23 that joint questions to the members will be due 1 December 2025. My

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1 intent is to provide them to the convening authority at the earliest
2 possible date for incorporation into whatever announcement is made to
3 selected members: "You've been selected. Here are the
4 questionnaires," so they can have as much time to answer those
5 questionnaires to get them back to the parties in time for you to
6 fashion your voir dire and prepare for trial and prepare for
7 challenges.

8 So, again, if you could add that to the things you discuss
9 in your pretrial planning and conferences through the summer and into
10 the winter so that you can provide a complete set of questionnaire
11 questions by 1 December, it would be greatly appreciated.

12 I don't interface with the convening authority. I just will
13 provide her the questionnaires I would like her to submit on behalf
14 of the commission.

15 I would also like the parties to interface -- I know the
16 government has informed the commission multiple times they intend to
17 put on a case that isn't classified. But that notwithstanding, I'd
18 like the parties to continue their discussion about things they think
19 would come up in a classified setting at trial, meaning exhibits and
20 witnesses and things like that.

21 I'm not setting any deadlines, but I think everybody knows
22 that can be an incredibly cumbersome process and involves parties
23 outside the parties before the commission. So the more you can be of

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1 assistance to each other to overcome as many impediments as you can
2 prior to you receiving my pretrial order, it would be greatly
3 appreciated and will facilitate the members not being impeded in
4 their fact-finding mission.

5 And I think that's what all the parties want, right? We
6 want the fact-finders to be satisfied in a timely fashion that they
7 are getting the full presentation from the parties. So again, just
8 facilitate that dialogue, and that's my request to you at that time
9 until you get the order.

10 The next thing I'd like to say, and it won't be in the
11 pretrial order, but you can expect what I'm going to call an exhibit
12 management order. I've decided to pull out matters related to the
13 exhibits from the pretrial order, because I think exhibits is going
14 to be a cumbersome process on its own as I contemplate it, and I
15 haven't even heard from the parties on it yet, is I know you have to
16 make it available for inspection. I know it has to be secured and
17 marked by the court reporters. I know that we have a SC/DRT process
18 that has to be conducted.

19 So that's why you'll get a separate exhibit management
20 order, so that you understand the expectations of the court of how to
21 ensure all those internal processes happen. And once you receive
22 that exhibit management order, if you tell me you need something
23 different, please do so as soon as you get that order and have had

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1 some time to talk to each other, and then inform the court of how you
2 would like some adjustments.

3 I understand we don't have a lot of precedent or archived
4 data on how to handle that process in the most effective way. You
5 guys may have more information than I do from your respective
6 offices. So please certainly share that with the commission.

7 And then the last thing is, I will talk about in the
8 pretrial order, is I intend to conduct a pretrial management
9 conference on 6 April 2026. You will get a separate pretrial
10 management conference order of all the things I intend to discuss
11 with the parties knowing that we are 60 days out, roughly two months
12 out from trial in order to facilitate anything the parties
13 individually need or jointly need or any concerns we can address,
14 again to ensure that once the fact-finders are assembled and
15 challenges are done and they're empaneled that we can move in an
16 orderly fashion.

17 The other things I'd like the parties again to contemplate
18 individually and jointly is -- everybody's familiar with how that
19 process will transpire. We will assemble the members. We will
20 conduct challenges. And once that is done, we are empaneled.

21 So one thing I'd like to know is how soon after empanelment
22 the government anticipates opening statements, as well as the
23 defense, opening statements, if they choose not to defer for the

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1 defense, after empanelment. So I have my guesses, but I don't want
2 it based on my guess. I want you to tell me, you know, what you
3 anticipate doing.

4 And same with when the government rests and the defense
5 begins to put on its case-in-chief, I'd like to hear from the defense
6 what they anticipate doing.

7 I don't need that information now. But again, just start
8 thinking about it. Because my pretrial order won't set dates. They
9 may set expectations, but not dates. And then obviously if we have
10 to take up presentencing -- and we don't know that now,
11 obviously -- but when would that commence?

12 And I will tell you my normal practice is I always ask the
13 defense first how they would like to proceed, knowing that it's a
14 significant pivot for the defense, less so for the government. So
15 anticipate I'm going to ask those questions of the time between those
16 key events.

17 That -- I don't need to address if we need to take any
18 recesses of a lengthy nature during a party's case-in-chief. That
19 will be obviously circumstance dependent. I'm just talking about the
20 things that we know will happen. Eventually the prosecution will
21 rest. Eventually the defense will rest. Eventually there'll be
22 findings and a possible presentencing proceedings.

23 Give that some thought. Share those thoughts with the

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1 commission so that we can proceed with some regularity as best we
2 can.

3 And again, I offer all that to you now because the next time
4 we will all be together will -- and be here on island for hearings
5 is, right now, November. And when I say "right now," I'm not
6 anticipating calling anybody down here this summer. I'm trying to
7 give the parties the entire summer to do all their preparation work
8 unimpeded by the judiciary. I think that's important. I think you
9 need that time. I think you need that time to build in a
10 decompression time for each of your team members as well. And the
11 summer is probably the most opportune time to do that, especially for
12 those with children and things of that nature.

13 That concludes the expectation management portion of my
14 discussion, but are there any questions from the parties based on
15 that?

16 Government, I'll let you start.

17 TC [CAPT STINSON]: A few questions, Your Honor. We have had
18 in the past in the AE 440 series certain deadlines. The government
19 has filed at least an initial witness and exhibit lists and the
20 hearsay notices.

21 So the 30 June deadline, is that related to those, or are
22 those -- I guess I'm just trying to find out exactly from the "all
23 notices due 30 June," what exactly that looks like from the

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1 government's perspective, Your Honor.

2 MJ [COL FITZGERALD]: So I think the benefit -- for the
3 benefit of both the commission itself -- meaning me -- and for the
4 defense who's had a change in learned counsel and may have other
5 change in counsel, I'm asking the government to complete any notices
6 that are outstanding and then to recertify any previous notices so
7 that we have an absolute -- well, I think for the
8 defense -- right? -- so they have confidence that they understand
9 that there are no more notices due and that any previous notices
10 given are still as previously noticed.

11 TC [CAPT STINSON]: Yes, Your Honor.

12 MJ [COL FITZGERALD]: And obviously that would include if you
13 need to amend a previous notice. It's not the time for adding to any
14 previous notices that were given, but if you need to amend it for any
15 reason, I'm trying to give that flexibility.

16 But, again, it's more for the defense to have confidence
17 that's it, we've got the final notices, we can spend the summer
18 preparing based on those notices.

19 TC [CAPT STINSON]: Yes, Your Honor. And because we were
20 planning for trial for 6 October, we have sort of an anticipated
21 witness list that would have laid out in a little bit more
22 granularity sort of -- because our earlier notice was so far out, it
23 was very, very broad.

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1 So we -- we do have -- we're still going to be roughly 11
2 months out. So I didn't know if there would also be an opportunity
3 later in time, because I'm not sure when the defense witness list is
4 due that we would have an exchange of sort of the final witness list,
5 if that makes sense.

6 MJ [COL FITZGERALD]: And those will be accounted -- in the
7 final pretrial order that you do receive, it will lay that out for
8 you, I think, in the most fair and equitable manner ----

9 TC [CAPT STINSON]: Understood.

10 MJ [COL FITZGERALD]: ----- but I understand your point.

11 TC [CAPT STINSON]: Understood. And then the last
12 question ----

13 MJ [COL FITZGERALD]: But let me also be clear. If any other
14 notices -- I would act, just what I think most prosecution teams do
15 is act in an abundance of caution when you give your notices. But
16 once that notice date is past, it's the standard you have to have
17 good cause, and then explain to the court why you're giving late
18 notice.

19 TC [CAPT STINSON]: Understood.

20 MJ [COL FITZGERALD]: So -- and sometimes good cause happens.
21 I understand that in a case of this nature, magnitude, the voluminous
22 records. Just simply tell me you need good cause after 30 June.

23 TC [CAPT STINSON]: Understood. Yes, Your Honor.

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1 And I appreciate the reference to an exhibit management
2 order. We do currently have a broad number of exhibits listed, and
3 so the -- as we're planning forward for trial, we may -- I just want
4 to flag this -- seek relief regarding the current list, because
5 that's developed over, you know, a long, long time, and that order
6 may confuse the members.

7 So I think we'll wait the exhibit management order, but
8 there may be an opportunity for us to sort of approach and request
9 permission to sort of redesignate some of those numbers just because
10 over time that's built out. I think we're at 1,036, or something
11 like that, prosecution exhibits. And based on our order of
12 witnesses, we may be starting in the -- you know, at the end of that
13 with the first witness, and I'm mindful I don't want to confuse the
14 members, so...

15 MJ [COL FITZGERALD]: Okay. And I understand, when you're
16 saying you're referring to the prosecution exhibit list by the
17 numbers you've established, those are not the ones designated by the
18 commission.

19 TC [CAPT STINSON]: No. They are the ones designated by the
20 commission. It's for identification.

21 MJ [COL FITZGERALD]: Okay. You've already done that?

22 TC [CAPT STINSON]: Yeah. Yeah, they've been marked and we
23 have a PE 1 through 1036 for identification. Some of those had been

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1 admitted and the vacated orders affected that, and I understand the
2 commission's ruling in relation to the preadmit, we're going to do
3 these at trial. It's just that as we're planning out our 10 week,
4 you know, week by week, witness by witness, that seems like that may
5 be confusing or cumbersome just based on how that list has already
6 developed. So I just wanted to make sure ----

7 MJ [COL FITZGERALD]: I appreciate that insight. Thank you.

8 Can I ask the defense, have you pre -- have you submitted
9 your exhibits for premarking? And I hope I didn't sound like a
10 scold. I'm just curious.

11 LDC [MS. MILLER]: No, sir.

12 MJ [COL FITZGERALD]: Okay. So -- and that's the difference
13 between the prosecution and the defense. And I think where the
14 exhibit management comes into effect from the commission is
15 understanding the government's already done that, and now I better
16 understand it. They won't necessarily follow a sequence for your
17 witnesses in the way that they're marked. And the defense will have
18 an opportunity to mark theirs later in the sequence they desire. But
19 I understand that now.

20 But what's going to be helpful is when we take up objections
21 on them, pretrial motions on anything related to exhibits, that we'd
22 be able to refer to them by their number or their nomenclature.

23 TC [CAPT STINSON]: Sure.

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1 MJ [COL FITZGERALD]: Okay. Thank you. Anything else?

2 TC [CAPT STINSON]: Yeah, just one last question?

3 MJ [COL FITZGERALD]: Yes, sir.

4 TC [CAPT STINSON]: I think I understand the answer to this.

5 So the trial date starting 1 June, that would be the anticipated date
6 when members would start in voir dire, but not the first witness? I
7 just wanted to be understood.

8 MJ [COL FITZGERALD]: Correct. So the very first thing I have
9 at trial is ----

10 TC [CAPT STINSON]: Understood.

11 MJ [COL FITZGERALD]: ---- we seat that panel. And here's my
12 expectation on things maybe the parties are going to be able to reach
13 resolution on and jointly agree that can come in as full evidence and
14 not for identification, is then we would take that up after we've
15 empaneled if the -- again, if the parties can reach an agreement on
16 those things.

17 Once that is concluded, that's where I'm asking,
18 "Government, are you ready to begin your opening statement,"
19 or -- and the defense, I'd like your input as well. If you don't
20 intend to defer opening statement is -- so I can understand if we're
21 going to take a longer recess than a day or a longer recess than a
22 week where, for example, I would send the members home and then have
23 them come back at a later date. Those are the kind of things that it

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1 would be helpful for the commission to understand what the parties
2 are contemplating.

3 TC [CAPT STINSON]: Yeah. The government would contemplate
4 moving right into opening statements. But we can ----

5 MJ [COL FITZGERALD]: Okay.

6 TC [CAPT STINSON]: ---- we can address that later on.

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

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

9 **[Pause.]**

10 TC [CAPT STINSON]: The only other point in relation to the
11 deadlines for the finals, some of our anticipated witnesses and our
12 evidence will obviously depend on some of the rulings that
13 are -- that are currently outstanding regarding the -- you know, the
14 statements that are, the government believes, admissible and that's
15 going to depend on sponsoring witnesses and the like.

16 So that's why some of that is still a little bit uncertain
17 from, you know, when we're going to submit our anticipated witness
18 list. That may change depending on some of the outcomes of those.

19 MJ [COL FITZGERALD]: Understood. Thank you, sir.

20 TC [CAPT STINSON]: Thank you.

21 MJ [COL FITZGERALD]: Defense? Ms. Miller, or do you ----

22 LDC [MS. MILLER]: No questions, sir.

23 MJ [COL FITZGERALD]: Do you want me to ask the team here as

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1 well, Ms. Miller?

2 LDC [MS. MILLER]: Not really.

3 MJ [COL FITZGERALD]: Okay. They appeared to not have any
4 questions.

5 **[Pause.]**

6 MJ [COL FITZGERALD]: The next thing I'd like to bring up
7 is -- and I can't remember the exact appellate exhibit number, but
8 Ms. Miller, she wanted to inform the commission that she was
9 requesting extension of time for -- is it a response?

10 Am I accurate, Ms. Miller? Maybe I'll just have you tell me
11 what you're requesting.

12 LDC [MS. MILLER]: Yes, sir. The commission had set a
13 deadline related to -- I believe it's the eighth hearsay notice the
14 government has provided. Other than -- obviously, the government
15 carries the burden to demonstrate the statement's reliability, but if
16 we had additional objections to any of that hearsay evidence, the
17 commission had set a deadline for 12 May to file any motions related
18 to that notice.

19 We anticipate filing five classified motions. And so we are
20 moving, without opposition from the government, for the deadline to
21 be pushed from 12 May to Wednesday, 14 May, please.

22 MJ [COL FITZGERALD]: Ah, thank you.

23 Government, is that accurate, that you had no objection?

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1 TC [CAPT STINSON]: That is correct. No objection to the move
2 until Wednesday, Your Honor.

3 MJ [COL FITZGERALD]: Very well. That request is granted on
4 those five -- you said five motions? Am I accurate?

5 LDC [MS. MILLER]: Yes, sir. And thank you, sir.

6 MJ [COL FITZGERALD]: Okay.

7 **[Pause.]**

8 MJ [COL FITZGERALD]: I informed the parties during the 802
9 that the next guidepost would be anything that the parties
10 anticipated taking up in the July or August session dates that are
11 now canceled that I had either not called for myself or could not
12 have anticipated.

13 So, Government, I'll start with you. Was there anything
14 that...

15 TC [CAPT STINSON]: The only, I think, outstanding matter that
16 we were trying to resolve was the AE 588 and whether or not the
17 defense was going to call an expert that was approved by the
18 commission. So I had anticipated that being resolved in
19 the -- because it's a jurisdictional challenge, in the July time
20 frame.

21 I think that was the only -- the only one that is, to
22 my -- you know, other than the ones they're going to file now in 621
23 and 622, the only motion series that were still outstanding that we

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1 were trying to knock out before the 6 October trial date. Over.

2 MJ [COL FITZGERALD]: Thank you.

3 Defense?

4 LDC [MS. MILLER]: We're fine addressing that in November.

5 MJ [COL FITZGERALD]: Okay. You're referencing the Appellate
6 Exhibit 588?

7 LDC [MS. MILLER]: Yes, sir. I was looking at Lieutenant
8 Colonel Nettinga. He's handling that.

9 MJ [COL FITZGERALD]: Okay.

10 LDC [MS. MILLER]: Just wanted to clarify, but we are fine
11 addressing that at the next session in November.

12 MJ [COL FITZGERALD]: Okay. Anything else from the defense
13 that you had anticipated taking up this summer that you would like to
14 bring to the commission's attention?

15 LDC [MS. MILLER]: Nothing from the RHR. And on this one, I
16 do not have an objection to the commission asking the group in Naval
17 Station Guantanamo Bay if they had any difference of opinion.

18 MJ [COL FITZGERALD]: Yes, ma'am. Thank you.

19 Commander Bartholomaeus?

20 DC [CDR BARTHOLOMAEUS]: No, sir. We have nothing here.

21 MJ [COL FITZGERALD]: Okay. Very well.

22 TC [CAPT STINSON]: Your Honor, just if I -- and I apologize
23 for not raising this earlier. But obviously with the defense filing

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1 five motions on Wednesday that are additional matters that we would
2 have intended to resolve prior to the 6 October trial date, that will
3 now be on, you know, the November docket, so.

4 MJ [COL FITZGERALD]: I concur. So I think there will be five
5 motions that will complete its pleading cycle this summer some point
6 before the October deadline, but we're not taking those up until
7 November, December. Is that ----

8 LDC [MS. MILLER]: To be -- sorry. To be clear, I anticipate
9 us filing additional motions beyond the five. Those are just
10 responsive ----

11 MJ [COL FITZGERALD]: Oh.

12 LDC [MS. MILLER]: ---- to the government's hearsay notice.

13 MJ [COL FITZGERALD]: Okay.

14 LDC [MS. MILLER]: I think there's going to be other things
15 beyond what's already been filed, what we intend to file Wednesday.
16 There will be additional pleadings that need to be addressed in
17 November and December.

18 MJ [COL FITZGERALD]: Okay. But I think to answer Captain
19 Stinson's question, you want to make sure you're including that, that
20 you anticipated maybe being able to take those up this summer but now
21 they'll be taken up in November?

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

23 MJ [COL FITZGERALD]: Okay.

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1 TC [CAPT STINSON]: And -- understood. I think we'll have the
2 timing there. Obviously, the government had the duty to advise the
3 survivors and the family members that the trial has been moved from 6
4 October to 1 June. So that's one of the least favorite things we
5 have to do, is we have to tell the family and the survivor members
6 about that delay. I certainly wouldn't want to do that again.

7 And so just making sure that we're going to be able to get
8 everything done and, again, get ready to trial and not lose that
9 date, the 1 June date. Over.

10 MJ [COL FITZGERALD]: Thank you, sir.

11 And I think the last thing I need to take up is Appellate
12 Exhibit 339EEE, but -- that's where I intended to conclude, but I
13 should ask: Is there anything else from the government you think
14 we're going to take up in this session?

15 TC [CAPT STINSON]: Not in the open session, Your Honor. I
16 think that was the -- 339EEE was the last thing on the docket for us.
17 Yes, Your Honor.

18 MJ [COL FITZGERALD]: Okay. Defense?

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

20 MJ [COL FITZGERALD]: Okay.

21 DC [CDR BARTHOLOMAUS]: One moment, Your Honor.

22 **[Counsel conferred.]**

23 DC [CDR BARTHOLOMAUS]: Sir, you had mentioned before that you

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1 had some questions with regards to 505(g) notices to the defense.

2 MJ [COL FITZGERALD]: Bear with me one second.

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

4 MJ [COL FITZGERALD]: Thanks, Commander Bartholomaus. I think
5 the way you phrased it, you thought I had some questions. I don't
6 have any questions, but what I wanted to reiterate is -- I have to
7 ask the parties. I think I may have said in 802, but not on the
8 record.

9 So I just want to repeat, I would ask the parties to
10 scrupulously comply with 505(g), reverse engineer, backwards plan
11 from the known trial date so that we can resolve those issues well
12 before.

13 Again, I think it's a little different than the pretrial
14 motions practice that's been going on for all these years, is we now
15 have a stop date in order to complete as many tasks as we can,
16 because it is my belief the parties want to present to the
17 fact-finders a clear and efficient exposition of the evidence as they
18 see it.

19 So that's the only point I wanted to make. I think the
20 parties do -- I'm not trying to intimate that the parties delay or
21 obfuscate. I'm just asking the parties. That's probably one of the
22 biggest and most cumbersome rocks in your ruck sack. So if you could
23 help each other facilitate that, knowing you want to give the members

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1 an efficient and timely exposition of evidence, please help each
2 other to do so.

3 That was it. So thank you for reminding me. I did say that
4 in the 802, but not here.

5 DC [CDR BARTHOLOMAUS]: Thank you, sir.

6 MJ [COL FITZGERALD]: Thank you.

7 LDC [MS. MILLER]: Just add one thing.

8 MJ [COL FITZGERALD]: Yes, ma'am.

9 LDC [MS. MILLER]: Just to be clear, we still have the
10 outstanding offer for pretrial agreement that ----

11 **[No audio feed.]**

12 MJ [COL FITZGERALD]: I absolutely understand that. I'm
13 hoping -- I don't speak to anybody but the parties in this case and
14 the public who can hear this. They're the only people I can speak
15 to. So I have no role in a submitted form of alternate disposition.

16 So I appreciate you reminding me that, but I'm hoping now
17 that all parties know the deadlines that it may help to get
18 resolution on that matter forthwith. That's all I can tell you,
19 Ms. Miller.

20 LDC [MS. MILLER]: Understood. I just wanted to -- to the
21 victim family members who are present, that that would still include,
22 even if that was accepted, a presentencing presentation where
23 evidence would be presented, victim family members would be allowed

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1 to be heard. And so even if we resolved the case in such a manner,
2 there will still be a presentencing presentation that would need to
3 be scheduled and obviously would include the testimony of victim
4 family members.

5 MJ [COL FITZGERALD]: Understood. And I think you've provided
6 them that information. There's nothing more I can say. So I just
7 want to be clear, I don't have anything to add to it and I appreciate
8 that you want that information shared in a public forum.

9 And I think the government and I concur with you that if
10 that resolution is favorable to the defense that it will change the
11 dynamics of how this commission proceeds, and I will change my order
12 to comport with that.

13 Is that what you were also asking about?

14 LDC [MS. MILLER]: **[Microphone button not pushed; no**
15 **audio]** ---- yes, sir. And I understand the commission's position.
16 Excuse me.

17 MJ [COL FITZGERALD]: Okay. Thank you.

18 TC [CAPT STINSON]: Your Honor, just on that point -- and
19 obviously we understand the current timing schedule is November and
20 December, but if something were to happen, we would talk with the
21 defense and maybe come back and see if we could get something
22 scheduled at an earlier time. And we understand that that wouldn't
23 be precluded. We just want to make sure that's clear.

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1 MJ [COL FITZGERALD]: If I receive different marching orders,
2 I adjust accordingly. As best I can phrase it, that's what I would
3 receive. I would receive very different marching orders, and then
4 from there the orders would come down to you.

5 TC [CAPT STINSON]: I understand.

6 MJ [COL FITZGERALD]: I would certainly want your input
7 collectively and individually as to how you would like those orders
8 from me to look and the timing and sequence. So the best information
9 you can give me, I'm aware those type of procedures are more party
10 driven than court driven, because the court is now helping the
11 parties manifest an agreement versus an adversarial process.

12 So I'd just tell you to ask for expectation management. The
13 more you can help me facilitate that, it would be greatly
14 appreciated.

15 Thank you, sir.

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

17 MJ [COL FITZGERALD]: If there's nothing else, I'd like to
18 take up 339EE -- EEE. Sorry, three echos.

19 Defense, this is more of a discussion for you. Are you
20 prepared?

21 LDC [MS. MILLER]: Yes, sir.

22 MJ [COL FITZGERALD]: I don't need a recess, but either party
23 want a recess? Again, this is the last thing, so...

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1 TC [CAPT STINSON]: The government's fine with pushing
2 through, Your Honor.

3 MJ [COL FITZGERALD]: Same with the defense?

4 LDC [MS. MILLER]: We're fine pushing through, sir.

5 MJ [COL FITZGERALD]: All right. I received last night after
6 we concluded our hearings Appellate Exhibit 339EEE, an application to
7 withdraw as detailed defense counsel concerning Mr. Padilla,
8 Mr. Joaquin Padilla, Mr. Nashiri's defense counsel.

9 I've had a chance to read it. And as I understand it -- and
10 please tell me if I am wrong -- that Mr. Padilla had a term
11 expiring -- hasn't expired yet, but will expire in September 2025.
12 It was not his intent to extend that term, but instead seek gainful
13 employment in a nonterm capacity.

14 Is that an accurate way of stating that, Mr. Padilla?

15 DC [MR. PADILLA]: Yes, Judge.

16 MJ [COL FITZGERALD]: All right. And since then,
17 Mr. Padilla's received a formal offer of employment that aligns with
18 the expectation of when he would complete his term of service. And
19 the defense asserts in the pleading that they have informed
20 Mr. Nashiri, Mr. al Nashiri, of this pending termination of
21 employment and the acceptance of the offer for full employment
22 subsequent to that.

23 And also that, as I understand, Mr. Padilla, you've informed

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1 him that not only is that the path forward you're looking at but that
2 Mr. Nashiri has a right to object to your termination and withdrawal
3 from this case, and that Mr. Nashiri -- Mr. al Nashiri has no
4 objection to this court granting your motion to withdraw.

5 Is that an accurate summary of ----

6 DC [MR. PADILLA]: It is, Judge.

7 MJ [COL FITZGERALD]: Also, that Ms. Miller as learned counsel
8 was informed of his decision, and also that Mr. Nashiri understands
9 his right to object and doesn't object, and I note this -- this
10 motion is dated 7 May 2025, and makes reference to the trial date,
11 not of October 2025, but of June of 2026. So the date for trial had
12 been enlarged from I imagine when, Mr. Padilla, you had contemplated
13 leaving this case, and also receiving a full offer of employment.

14 But, Ms. Miller, so my question for you is: With all that,
15 it's your understanding that with the full panoply of attorneys and
16 resource counsel and resource personnel, analysts, paralegals, and
17 any other assistance, that you are fully prepared to continue towards
18 that trial date in the absence of Mr. Padilla?

19 LDC [MS. MILLER]: With tremendous sadness, yes.

20 MJ [COL FITZGERALD]: Oh, I absolutely understand that.
21 So -- and I take that Mr. Padilla's portfolio of matters is being
22 handled by other attorneys on your team?

23 LDC [MS. MILLER]: **[Microphone button not pushed; no**

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1 **audio.]** ---- excuse me. We are in the process of designating
2 everything that Mr. Padilla was handing to other members and
3 soliciting applications to onboard potentially a new lawyer.

4 MJ [COL FITZGERALD]: Okay. And then so by -- if I were to
5 grant the withdrawal of Mr. Padilla, then you are still contemplating
6 your team to be fully resourced and prepared for trial starting 1
7 June 2026?

8 LDC [MS. MILLER]: Yes, sir.

9 MJ [COL FITZGERALD]: Okay. Can I ask, because your -- well,
10 I don't know, you can certainly defer, Mr. Padilla -- your request
11 for withdrawal indicates that in support of that request, that the
12 defense is, I think the word was, "onboarding" a new attorney in a
13 GS -- oh, here it is. "The defense team is currently in the process
14 of onboarding an additional GS-15 lawyer with extensive experience
15 defending capital cases."

16 Can either of you speak to what the phrase "currently in the
17 process of onboarding a GS-15" -- are they ----

18 DC [MR. PADILLA]: I certainly cannot answer that, but perhaps
19 Ms. Miller or Commander Bartholomaeus could answer that.

20 LDC [MS. MILLER]: We had a GS-15 lawyer who had been issued a
21 temporary job offer. We had an extra billet beyond Mr. Padilla's for
22 a GS-15 civilian attorney. We had an attorney who had been offered a
23 temporary job offer when the hiring freeze took effect. And so that

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1 process ostensibly stopped at that point.

2 We have been given indication that the MCDO is now exempt
3 from the hiring freeze and we can re-begin that process, but it's not
4 like a switch turning it on and off. And so, yes, Commander
5 Bartholomaeus would certainly have more information as our
6 administrative team lead but we are -- when we say "in the process,"
7 turning back on the hiring process has not been an easy feed, but
8 we're working on it.

9 MJ [COL FITZGERALD]: Okay. Are you deferring to Commander
10 Bartholomaeus, then?

11 LDC [MS. MILLER]: If there's any additional information he
12 has.

13 MJ [COL FITZGERALD]: Okay. So where are you at in this?
14 There's a lot of things we can call the onboarding process as
15 a -- you have to reinitiate, are you back to square one, or has the
16 person accepted the offer?

17 DC [CDR BARTHOLOMAEUS]: The -- Your Honor, the person has
18 accepted the offer. The problem is, as Ms. Miller indicated, it's
19 not just a system that turns on and off. This is definitely a
20 process that's in process; this change, an exemption from the hiring
21 freeze, which is information that we only received within the last 10
22 days.

23 Needless to say, Your Honor, I can assure you that we are

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1 pressing the system as hard as we possibly can to get not only the
2 prospective applicant and candidate into the position, but as well as
3 filling two other open positions that we have on our team through
4 this process.

5 However, at this point I have no further information to
6 provide the commission where we are at in that process, because
7 unfortunately we don't manage the process as a team.

8 MJ [COL FITZGERALD]: Sure. Well, I think there's some things
9 you can help me with. Is -- has the person accepted the offer? Are
10 you at that stage?

11 DC [CDR BARTHOLOMAUS]: Oh, yes, sir.

12 MJ [COL FITZGERALD]: Okay.

13 DC [CDR BARTHOLOMAUS]: He's accepted the offer. Has started
14 the clearance process, et cetera. But everything was put on pause
15 once the hiring freeze hit in February. Therefore, restarting the
16 process, it takes an amount of time that we're not prepared to
17 represent to the court right now because we simply don't know.

18 MJ [COL FITZGERALD]: Okay. So they've accepted the offer,
19 but -- and as part of the onboarding, they -- it appears what you're
20 saying, they currently don't hold a security clearance?

21 DC [CDR BARTHOLOMAUS]: That's correct, sir. The way the
22 process works is that ----

23 MJ [COL FITZGERALD]: No. I understand how the process ----

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1 DC [CDR BARTHOLOMAUS]: Okay.

2 MJ [COL FITZGERALD]: ----- we're also talking about multiple
3 processes.

4 DC [CDR BARTHOLOMAUS]: Understood.

5 MJ [COL FITZGERALD]: So what you're telling me is the
6 person says -- I'm going to speak just more plainly. "Yes, I want to
7 come work for your team." They've already said that.

8 DC [CDR BARTHOLOMAUS]: Yes, sir.

9 MJ [COL FITZGERALD]: All right. One of provisoes is you have
10 to have a security clearance. And they've told you, "Yes I'm going
11 to put myself through the PSIP process to get a security clearance?

12 DC [CDR BARTHOLOMAUS]: Yes, sir.

13 MJ [COL FITZGERALD]: And they've given you some assurances
14 they don't think there's anything that would prevent them from
15 getting that security clearance?

16 DC [CDR BARTHOLOMAUS]: Correct, sir.

17 MJ [COL FITZGERALD]: And you've already determined they're
18 fully qualified otherwise, a member in good standing with the bar?

19 DC [CDR BARTHOLOMAUS]: Yes, sir.

20 MJ [COL FITZGERALD]: With qualified capital experience.

21 DC [CDR BARTHOLOMAUS]: Yes, sir.

22 MJ [COL FITZGERALD]: So now we're just talking about the
23 general onboarding process once somebody's accepted the offer.

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1 DC [CDR BARTHOLOMAUS]: That's correct, sir.

2 MJ [COL FITZGERALD]: Okay. I understand the machinations
3 that none of us ever want to talk about, especially on a public
4 record, about the process you are now referring to.

5 DC [CDR BARTHOLOMAUS]: Yes, sir.

6 MJ [COL FITZGERALD]: I would just ask you, just like you have
7 done in the past with Ms. Miller and, I believe, one of your other
8 consultants that you've given me updates as to where we are at with
9 the security clearance. The government has repeatedly told me they
10 can't move that process any faster. I will probably still press them
11 to use soft diplomacy as best they can to encourage that process to
12 get completed timely.

13 But what I am hearing, wherever we're at in this process,
14 your knowledge of this person, capabilities and the processes
15 administratively they have to go through, that they'll be full and
16 ready for trial when they come onboard six -- they'll be ready for
17 trial on 6 June 2025, unless you -- unless an impediment affects you
18 otherwise and you need to inform the commission.

19 DC [CDR BARTHOLOMAUS]: Correct, sir.

20 MJ [COL FITZGERALD]: Okay.

21 TC [CAPT STINSON]: Your Honor, just minor corrections. 1
22 June, not 6 June. I hate to ----

23 MJ [COL FITZGERALD]: I keep saying "6 June." I appreciate

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1 that. Thank you. The trial date is 1 June. So I have not amended
2 that trial date. Thank you for clarifying that.

3 **[Pause.]**

4 MJ [COL FITZGERALD]: The other thing I want to point out is I
5 noticed, Mr. Padilla, in your pleading you refer to 339QQ, which
6 was -- I think predates my being detailed to this case. So I had to
7 go back and contemplate that, because what you mention is this
8 commission found no prejudice with the withdrawal of another counsel
9 reflected in 339QQ.

10 I just want to make sure the defense is -- will acknowledge
11 that we have a trial date in 12 months, and so I would not use 339QQ,
12 or if I were to grant the withdrawal request in 339EEE as necessarily
13 precedent how I would treat any further requests for withdrawal.

14 At this point we should have the full panoply of lawyers who
15 are representing their side's interests ready for trial in a year.
16 So I am going to grant the request to withdraw for Mr. Padilla. I
17 don't want to create any shock or concern.

18 But I do want to be clear, and I want to put this on the
19 record, that neither this withdrawal grant or any previous withdrawal
20 grant are necessary precedent I would rely on going forward knowing
21 that we are 13 months out from trial.

22 So please inform the commission soon if you think anybody
23 else intends to withdraw from representation. But I intend to keep

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1 the trial date I have set and the pretrial practice and move on to
2 the full adversarial proceeding in front of members as docketed.

3 So, Mr. Padilla, I think I thought I had a question for you,
4 but I don't. I think I was just referring to you because you're the
5 signatory to that document. But I probably should pose that question
6 now that I've told you I'm going to grant that request.

7 But anything from you, Ms. Miller, in regard to what I have
8 just said?

9 LDC [MS. MILLER]: No. I understand the commission's
10 position.

11 MJ [COL FITZGERALD]: Okay. Thank you.

12 And with that, your request is granted, Mr. Padilla, and we
13 wish you well in your future endeavors.

14 DC [MR. PADILLA]: Thank you, Judge.

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

16 MJ [COL FITZGERALD]: Thank you. I think through that
17 discussion with the defense I probably failed to do one thing.

18 And, Ms. Miller, I'm just going to ask
19 Mr. Nashiri -- Mr. al Nashiri. I note that there's an assertion that
20 Mr. al Nashiri does not object to the withdrawal as an assertion for
21 Mr. Padilla. But I'm just going to ask Mr. al Nashiri if that is, in
22 fact, accurate, that he doesn't object. I know I've granted it, but
23 I just want to confirm that on the record. So ----

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1 LDC [MS. MILLER]: Understood.

2 MJ [COL FITZGERALD]: Thank you.

3 Mr. al Nashiri, I think I've said good morning to you, but
4 if I haven't, good morning.

5 ACC [MR. AL NASHIRI]: Good morning.

6 MJ [COL FITZGERALD]: I have been informed -- I've been
7 informed that you were made aware that Mr. Padilla would be leaving
8 your defense team for other employment and that Mr. Padilla has, and
9 your defense team, have informed you you can object to his
10 withdrawal, and they've told me you don't object to his withdrawal.
11 Is that accurate?

12 ACC [MR. AL NASHIRI]: Yes. Correct.

13 MJ [COL FITZGERALD]: Okay. Thank you.

14 And I think that resolves that issue. And thank you for
15 allowing me to come back and make sure we had that on the record.

16 Anything else from the parties?

17 MATC [MR. WELLS]: Yes, Your Honor.

18 MJ [COL FITZGERALD]: Mr. Wells.

19 MATC [MR. WELLS]: May we be heard? Just one thing.

20 MJ [COL FITZGERALD]: You may.

21 MATC [MR. WELLS]: Thank you.

22 Sir, good morning.

23 MJ [COL FITZGERALD]: Good morning.

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1 MATC [MR. WELLS]: I don't intend that this would countermand
2 or disrupt your decision already to release Mr. Padilla. He's a fine
3 attorney. He's represented Mr. Nashiri well and we appreciate his
4 professionalism.

5 You already answered one question that we had about his
6 replacement counsel and the onboarding with detail, and we understand
7 that an exemption has been granted and that's in process.

8 However, between now and June of 2026, for the complete
9 composition of the defense team, you also have military counsel which
10 was contemplated in the filing. And I know that you've offered to
11 the parties to inform you if you have any changes, but I would ask
12 that you press the defense more firmly: Do we anticipate any loss of
13 military counsel this cycle, either in the summer or in the fall, out
14 of cycle?

15 And looking forward in 2026, is it contemplated that we
16 would lose other counsel? For example, Lieutenant Colonel Nettinga,
17 who's been with us for awhile.

18 Those type of things are of concern to the prosecution to
19 make sure that the defense is fully resourced with competent counsel
20 who have been on the case, and that would certainly have substantial
21 prejudice, we think, to their team.

22 So that's the only thing that we would ask, that you ask the
23 defense if they anticipate at this time if they can disclose

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1 projected military losses 2025 and 2026, sir.

2 MJ [COL FITZGERALD]: Very well.

3 MATC [MR. WELLS]: Thank you.

4 MJ [COL FITZGERALD]: Ms. Miller, do you believe you can
5 answer that question now?

6 LDC [MS. MILLER]: I would like to defer to Lieutenant Colonel
7 Nettinga, if that's okay with the commission.

8 MJ [COL FITZGERALD]: You may. Thank you.

9 Good morning.

10 DDC [Lt Col NETTINGA]: Yeah, so I certainly appreciate
11 Mr. Wells' concern. Obviously, I cannot speak on behalf of United
12 States Air Force JAG Corps, United States Navy JAG Corps.

13 We do not anticipate losing anybody in the summer of 2025,
14 this summer. I have not been informed that anyone will be moving as
15 of 2026, but that is all that I can say.

16 Speaking for myself personally, I have no desire to move
17 from this case, and I have made those desires as clear as possible to
18 the detailing authority for the United States Air Force JAG Corps
19 that it is my intent to remain a part of this case until its
20 resolution, whenever that may be.

21 MJ [COL FITZGERALD]: Thank you.

22 DDC [Lt Col NETTINGA]: That's all that I can say.

23 MJ [COL FITZGERALD]: Well, let me just ask. I know you're

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1 speaking for you, yourself. Can you speak for Commander Bartholomaus
2 or Lieutenant Shaver? Or do you want them to make their own
3 representations or can they?

4 DDC [Lt Col NETTINGA]: I think whatever personal desires they
5 have are certainly things that they can share, if that matters to the
6 commission. And not that their personal desires don't matter to us,
7 but we are beholden to something larger than ourselves, and so I
8 think that our personal desires aren't necessarily the things that
9 dictate, as we well know.

10 MJ [COL FITZGERALD]: Sure. I -- so thank you, Colonel
11 Nettinga.

12 So I'll just address this to Commander Bartholomaus and
13 Lieutenant Shaver, that I -- being a defense attorney is an important
14 role, so I don't necessarily need your personal desires. You're
15 here. You're doing fine work. You've never given me any reason to
16 doubt that you're here because you think it's important to be here as
17 an attorney.

18 But what I would ask is -- because I don't understand the
19 Navy hiring -- not "hiring," the Navy orders process and assignments
20 process and how it's done, but will you be informing the people who
21 decide Navy JAG Corps assignments for your particular grade and where
22 you're at in your career, will you be informing them that the court
23 has granted a defense continuance in part and docketed this case for

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1 1 June for their consideration in your assignments?

2 DC [CDR BARTHOLOMAUS]: If so required, sir, I can do that.
3 But I can also represent to the commission that my orders currently
4 have a projected rotation date of August of 2027. So subject to the
5 needs of the Navy, this is my billet ----

6 MJ [COL FITZGERALD]: Very well.

7 DC [CDR BARTHOLOMAUS]: ---- until that time.

8 MJ [COL FITZGERALD]: And can you speak for Lieutenant Shaver
9 or does he have to speak for his own circumstances?

10 DC [CDR BARTHOLOMAUS]: With regards to Lieutenant Shaver, he
11 and I have discussed this in some respects, but at this point I would
12 have to defer to him for the issue. The Navy right now is currently
13 looking at doing their detailing process for the summer of 2026. As
14 I understand it, we generally move ahead of other services in that
15 regard. But as far as his personal desires, et cetera, I would have
16 to defer to him.

17 MJ [COL FITZGERALD]: Okay. Lieutenant Shaver, do you wish to
18 be heard?

19 DC [LT SHAVER]: Sure, sir. So right now I'm going through
20 the process of figuring all that out. I am either on two- or
21 three-year orders.

22 MJ [COL FITZGERALD]: And when did those -- when are those set
23 to expire at the earliest?

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1 DC [LT SHAVER]: The earliest would be summer of 2026, sir.

2 MJ [COL FITZGERALD]: Okay. But with potential until the
3 summer of 2027 I think is also what you're saying?

4 DC [LT SHAVER]: Yes, sir.

5 MJ [COL FITZGERALD]: Okay. Is there a way you can also
6 inform the assignment folks that we have docketed this trial for the
7 summer of 2026 for their consideration?

8 DC [LT SHAVER]: Yes, sir, there is a way. And with the
9 continuance, I think that's more details about that, but I'll have to
10 work through that, sir.

11 MJ [COL FITZGERALD]: Okay.

12 Mr. Wells, does that satisfy your request? I don't want to
13 press the defense any further. They don't have a written order, a
14 written ruling. So I think they've been very forthcoming with
15 information.

16 Is that helpful?

17 MATC [MR. WELLS]: Yes, sir, it is. And I hope that's helpful
18 to the commission, because they did specify in their filing from
19 Mr. Padilla that the composition of the team is not expected to
20 change and that they would be prepared.

21 I was reminded by a co-counsel, though, that they also
22 mentioned that there's one additional civilian attorney on the team
23 that's experienced in capital litigation. I hesitate, but it may be

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1 Ms. Carmon. Also, it's been advertised that Ms. Carmon has a term of
2 employment, and I just wonder if we're going to get another request
3 voluntarily from her, if she receives another job, to also depart the
4 team now that trial has been extended to 1 June 2026.

5 I think it's important for the commission, at this point at
6 least, to make some inquiry. And what the prosecution is looking for
7 is a firm commitment that the team will not be disassembled by
8 voluntary absences or requests in 2026, heading to the June trial
9 date, sir.

10 MJ [COL FITZGERALD]: Very well.

11 LDC [MS. MILLER]: And, Judge, at this point I'm going to
12 object. I don't think -- the commission has indicated we have been
13 forthcoming. There is no reason to discount what has been
14 represented.

15 The attorney with the detailed capital experience is Jessica
16 Manuele. All of the civilians are term employees, and whether their
17 terms will be extended or not is a matter for the Department of
18 Defense or the federal government at this point.

19 But I think any further inquiry about each individual on
20 this team is inappropriate. We're not asking the same of the
21 government. And so I'm -- I'm objecting at this point.

22 MJ [COL FITZGERALD]: Your objection is noted. And prior to
23 your objection I was intending to inform Mr. Wells I'm not going to

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1 make further inquiry.

2 Here's what I know. The person you're speaking to,
3 Ms. Carmon, has been zealously representing her client. She is a
4 trial attorney. I have no reason to believe she doesn't want to be a
5 trial attorney at trial in this case, and I've been given no
6 indication of that.

7 I don't want to have her make an affirmation or confirmation
8 and then believe this commission is going to hold her to that at a
9 future date when circumstances may change. I think everybody on this
10 defense team and the prosecution team I presume will be there.

11 I certainly did appreciate you wanting to check on the
12 military folks because orders are exactly what they say they are;
13 they are orders. So I did the best I could to ensure that they
14 informed handlers of detailing, that it's important that these folks
15 be given significant consideration to be on this team in the summer
16 of 2026 to override any desire to remove them from the team for other
17 assignments. And I think that's what I understood from both
18 Commander Bartholomaus and Lieutenant Shaver.

19 They're not -- they're not trying to leave this team, and
20 they're -- I would hope they're not encouraging detailing orders that
21 remove them from this team. That's a risk for them to take, but
22 if -- I would hope they're not.

23 Again, I'm not going to ask Ms. Carmon, because I think

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1 that's the person we're speaking about, her intent other than to
2 continue to zealously represent her client as she has done thus far.

3 MATC [MR. WELLS]: Yes, sir. Thank you very much. I do
4 understand that.

5 On behalf of the government and the prosecution, I would
6 like to express to the commission on the record that this request by
7 Mr. Padilla is not because he's been denied an extension of his term
8 of employment, but this is a voluntary request where he's decided not
9 to request renewal. The U.S. Government has not prevented him, as
10 Ms. Miller just advertised, that that is the main impediment to
11 continued term employment.

12 So for Ms. -- Ms. Carmon in her representation, you've
13 already set the bar in your expectation that if you're going to do a
14 voluntary request not to continue to represent the accused, that you
15 inform the commission as soon as possible.

16 I would also like to point out that between the prosecution
17 and the defense, the defense has a heightened responsibility to the
18 accused, and other obligations, ethical obligations to represent the
19 accused in a capital case that are not imposed on the prosecution.

20 So that's all, sir. Thank you.

21 MJ [COL FITZGERALD]: Thank you. I appreciate that,
22 Mr. Wells.

23 Again, I think how I let the defense know of my -- my

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1 concerns and the way I'd like to go forward is I was clear that I am
2 not considering this withdrawal or any previous withdrawal as a
3 precedent for any future requests for withdrawal, noting that we have
4 a very specific trial schedule in the forthcoming 14 months.

5 So I think the defense has received my comments as the -- as
6 the warning it intended to serve.

7 Is that how you received it, Ms. Miller?

8 LDC [MS. MILLER]: Yes. I understood the commission
9 perfectly.

10 MJ [COL FITZGERALD]: Okay.

11 So I thank you. Again, I appreciate everybody helping the
12 commission move through these processes, and they're all necessary
13 and we've made a record of everything.

14 If there's nothing further, this -- is there anything
15 further? Government?

16 TC [CAPT STINSON]: There's nothing further from the
17 government in open session. I think that's it for the government.
18 Over.

19 MJ [COL FITZGERALD]: Anything from the defense?

20 DC [CDR BARTHOLOMAUS]: One moment, Your Honor.

21 LDC [MS. MILLER]: And just a thank-you to Mr. Powell on
22 behalf of the defense.

23 DC [CDR BARTHOLOMAUS]: With leave of the commission, I have

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1 just some comments to make for about two minutes if that's okay?

2 MJ [COL FITZGERALD]: Okay.

3 Captain Stinson, did you have something you wanted to say
4 first? You stood up. Did you have an alibi?

5 TC [CAPT STINSON]: It was an alibi. It was an administrative
6 matter, because the prosecution has two -- two members that likely is
7 going to be their last -- their last time here before the commission
8 because they are rolling.

9 MJ [COL FITZGERALD]: Do you mind if I let him comment on his
10 alibi, then we'll turn ----

11 TC [CAPT STINSON]: Yes, Your Honor.

12 DC [CDR BARTHOLOMAUS]: We were going to do the same thing,
13 Your Honor.

14 MJ [COL FITZGERALD]: Okay. I'll let the government go first.

15 TC [CAPT STINSON]: So for the government, Major Danielczyk
16 and Lieutenant Huston, this will likely be their last time before the
17 commission because we're out until November. We'll make sure the
18 detailing are up-to-date when that occurs, but we just wanted to
19 inform the commission because we've had a lot of that disclosure
20 today. So that's all.

21 MJ [COL FITZGERALD]: Okay. I'm glad, then, that Lieutenant
22 Huston had the opportunity to be the lead advocate in front of the
23 commission.

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1 Lieutenant Huston, your service has been commendable and
2 appreciated, and we wish you -- I don't remember the Navy term ----

3 TC [CAPT STINSON]: Fair winds and following seas, Your Honor.

4 MJ [COL FITZGERALD]: Fair winds and following seas. Thank
5 you. The Army just tells you to keep rolling along, so it's a little
6 different. But thank you.

7 ATC [LT HUSTON]: Thank you, Your Honor.

8 MJ [COL FITZGERALD]: And that was it for the government?

9 TC [CAPT STINSON]: Major Danielczyk as well, Your Honor.

10 MJ [COL FITZGERALD]: Oh, I'm sorry.

11 TC [CAPT STINSON]: I'm not honestly sure what the Air Force
12 term is. "Fly high" or something.

13 MJ [COL FITZGERALD]: "Aim high"?

14 ATC [Capt DANIELCZYK]: We'll go with that, sir.

15 MJ [COL FITZGERALD]: Okay. Again, and Major Danielczyk,
16 thank you to your service to the commissions. It's been valuable.
17 And I hope you leave here knowing that, and "aim high."

18 ATC [Capt DANIELCZYK]: Thank you, Your Honor.

19 DC [CDR BARTHOLOMAUS]: Your Honor, I just wanted to mention
20 that by the next time that we meet in session, there's an additional
21 team member that we will not have here, though. He has not
22 necessarily been on the record before you. That's Legalman First
23 Class Petty Officer Geoffrey Wood who after more than 20 years of

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1 honorable service will be retiring at the end of the year going on
2 terminal leave in September. He's been an absolutely critical member
3 of our team and a bedrock that we've all relied on behind the scenes.
4 You've seen him a lot. I just wanted to mention that to Your Honor.

5 And thank you, Geoff. I appreciate it.

6 MJ [COL FITZGERALD]: And I'll speak on behalf of my team as
7 well that, you know, although we have some other folks leaving,
8 retirement is an especially important event in a military
9 serviceman's life, because it doesn't happen as often as, I think,
10 people think it does.

11 I'm going to badly quote -- I'm not even going to try to
12 quote it, but Adlai Stevenson once said that, you know, patriotism is
13 not short bursts of action. It's a long slog. That's my version of
14 it.

15 And that's what a 20-year or longer service represents.
16 It's been a long slog of patriotism. And I think on behalf of the
17 nation and this commission and the Department of Defense, as best I
18 can I wish you fair winds and following seas as well. And thank you
19 for your service.

20 Is that it?

21 TC [CAPT STINSON]: That's it from the government, Your Honor.

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

23 Then this commission is in recess until further order of the

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1 commission.

2 **[The R.M.C. 803 session recessed at 1129, 08 May 2025.]**

3 **[END OF PAGE]**