

UNCLASSIFIED//FOR PUBLIC RELEASE
MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA

v.

ABD AL HADI AL-IRAQI

AE 015R

RULING

Defense Motion For A Continuance

20 May 2016

1. On 5 January 2016, the Defense requested a continuance of “no less than eighteen months to prepare for trial.” (AE 015K at 1). The Defense argued,

“The current Defense team needs to finish fully assembling; it needs to incorporate its new Pro Bono Civilian Counsel, along with the new GS-15 civilian counsel; it needs to become familiar with the previously supplied classified and unclassified discovery; it needs to pursue and obtain further classified and unclassified discovery from the Government; and it needs to become competent in an extremely complicated area of the law—national security law—but also in a rarely practiced area of law—the international law of war—both of which are for the most part entirely new areas of practice for all the current and prospective military and some of the civilian Defense Counsel.” (AE 015K at 1-2).

The Government requested “the Commission deny the Defense Motion for a Continuance in its current form. Should the Commission grant a continuance, the Government respectfully requests that it be initially granted only until such time as Mr. Brent Rushforth, retained pro bono Civilian Defense Counsel, has obtained the appropriate security clearances necessary to represent the Accused.” (AE 015L at 1). In AE 054, the Commission docketed AE 015K to be heard at the January 2016 hearing. Subsequently, the Defense filed AE 054A, requesting a continuance until Mr. Rushforth received his security clearance. The Commission granted the Defense Request. (AE 054D). The Commission docketed AE 015K to be heard at the May 2016 hearing. (AE 055). On 27 April 2016, the Commission was notified that Mr. Rushforth had received his required security clearances. (AE 053K). On 6 May 2016, the Defense filed AE 055E requesting to continue or abate the May 2016 hearing to allow Mr. Rushforth time to review classified

evidence, along with three additional justifications. The Commission denied the Defense request. (AE 055G). AE015K was argued on 17 May 2016.¹

2. At the May 2016 hearing, the Defense argued three bases for the continuance (none of which appeared in Defense pleadings): (1) the expected addition of four attorneys to the Defense team; (2) a decision affecting Charge V, Conspiracy, is pending at the United States Court of Appeals for the District of Columbia; and (3) the Government has not yet provided all discovery to the Defense.

3. Under Rule for Military Commissions 906(b)(1), the military judge should grant a continuance upon a showing of reasonable cause by the moving party. *See* R.M.C. 906(b)(1) discussion. The Defense has failed to meet this burden. The Commission agrees that trial will not commence until the Government completes discovery. Pending appellate litigation related to the conspiracy charge is not a basis to halt pretrial litigation of other issues. The Defense has conceded they are able to proceed with some pretrial litigation before the three argued bases for a continuance are completed. (*See* Transcript at 731).

4. A subsequent order will set a filing deadline for any Defense motion related to what right, if any, the Accused has to additional civilian defense counsel.

5. The Defense request for an eighteen month continuance is **DENIED**.

6. The parties will conference and agree upon future litigation milestones, including milestones for the personal jurisdiction hearing directed to occur in AE 020B. The parties will submit a joint pleading listing the agreed upon subjects of future milestones **NLT 24 June 2016**. If the parties agree upon any timelines for the milestones, these should be included in the joint pleading. If the

¹ *See* Unofficial/Unauthenticated Transcript of the *US v. Abd al Hadi al-Iraqi* Motions Hearing Dated 17 May 2016 from 10:42 A.M. to 11:43 A.M. and 12:07 P.M. to 12:43 P.M. at pp. 723–70.

parties cannot agree on timelines for the various milestones, they will submit separate pleadings with their proposed timelines **NLT 1 July 2016**.

So **ORDERED** this 20th day of May, 2016.

//s//
J. K. WAITS
CAPT, JAGC, USN
Military Judge