

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

UNITED STATES OF AMERICA v. ABD AL HADI AL-IRAQI	AE 053D ORDER Civilian Counsel Deadlines and Continuance Request 25 November 2015
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1. Mr. Hadi al Iraqi was arraigned on 18 June 2014. At the arraignment¹ and on two occasions thereafter the Commission has discussed his rights to civilian counsel with him on the record.² On 13 November 2015, the Defense submitted a declaration from Brigadier General (BGen) John G. Baker, the Chief Defense Counsel, which stated he was in contact with several attorneys willing to work on Mr. Hadi al Iraqi's case in a pro bono status. (*See* AE 053C, Att. B). During an 18 November 2015 Rule for Military Commission (R.M.C.) 802 Conference, BGen Baker³ stated an agreement was reached for two civilian counsels to work on Mr. Hadi al Iraqi's case in a pro bono status.⁴ In addition, BGen Baker indicated he is in the process of hiring a DoD civilian attorney whom he will detail to represent Mr. Hadi al Iraqi as an assistant defense counsel pursuant to R.M.C. 503 and Regulation for Trial by Military Commission (R.T.M.C) 9-1.b.1.B. (*See* AE 053C, Att. B).

2. During the 18 November 2015 R.M.C. 802 Conference, Major (MAJ) Robert Kincaid, Detailed Military Defense Counsel, stated the Defense is not ready to proceed in light of the ongoing efforts to obtain pro bono civilian defense counsel. Additionally, MAJ Kincaid averred the Commission could not proceed until the pro bono civilian defense counsel was detailed as the

¹ *See* Unofficial/Unauthenticated Transcript of the Abd al Hadi al-Iraqi Motions Hearing (Transcript) Dated 18 June 2014 from 2:14 P.M. to 2:47 P.M. at pp. 5–10.

² *See* Transcript Dated 15 September 2014 from 1:34 P.M. to 2:39 P.M. at pp. 22–23 and Transcript Dated 22 September 2015 from 10:47 A.M. to 11:46 A.M. at pp. 658–60.

³ BGen Baker, while not a party, was permitted to provide the Commission with factual administrative information relevant to the status of his office's work in securing pro bono counsel for Mr. Hadi al Iraqi.

⁴ Counsel are reminded that statements made during R.M.C. 802 Conferences are not considered evidence.

lead defense counsel. The Government agreed with the Defense's position concerning the Commission's inability to proceed with substantive matters. The Military Judge stated the January 2016 session⁵ will remain in place in order to allow the Defense an opportunity to state their position on the record. In preparation for the January session, the Commission directs the Defense to:

a. Submit a formal continuance request, if a continuance is desired, not later than **4 January 2016**, indicating for how long and to what extent it requires a delay of future proceedings.⁶ This request shall include any factual circumstances, evidence, and case law to support the Defense's position that the Commission cannot proceed with pretrial, interlocutory matters in the absence of anticipated pro bono civilian defense counsel. The request shall also contain a statement or acknowledgment by the Defense as to whether any continuance granted by the Commission, pursuant to the Defense request, is excludable delay under R.M.C. 707(b)(4)(E)(ii).

b. Any response and reply will be submitted within the normal briefing timeframe. *See* Military Commission Rule of Court 3.7. The continuance request will fall within the AE 015 series.

3. During the 18 November 2015 R.M.C. 802 Conference, a 1 January 2016 deadline for pro bono civilian defense counsel to submit all required documentation to obtain security clearances was proposed by the Government and agreed upon by the Defense. The Commission hereby sets a **1 January 2016** deadline for pro bono civilian defense counsel to complete and submit all required documentation to obtain security clearances and to complete all required application procedures for qualification as civilian defense counsel prescribed by R.T.M.C. 9-5.c. Detailed

⁵ AE 015J amends the dates of the January session set in AE 015G.

⁶ AE 015G and AE 015J establish the future sessions of the Commission.

military defense counsel will notify the Commission via a notice pleading within one week of the occurrence of these events.

So **ORDERED** this 25th day of November, 2015.

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