MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA **v.** **ABD AL HADI AL-IRAQI**	**AE 058B** **RULING** **Defense Motion** for Appropriate Relief – Attribution of Speedy Trial Delay **19 August 2016**

1. The Defense initially raised the issue of attribution of delay in AE 015K and AE 055B.[1] (*See* AE 015K at 10–13 and AE 055B at 18). During the May 2016 hearing, the Defense agreed to argue this issue at the July 2016 hearing.[2] In AE 056, the Commission set a 15 June 2016 deadline for the Defense to submit their brief, if any. Subsequently, the Defense filed AE 058 and argued, "any delay to this point is properly attributable to the Government as its processes have impeded Mr. Al-Tamir's[3] assertion of his right to counsel of choice, and thus the timely trial of his case." (AE 058 at 2). The Government reply argued, "this Commission did not err when it determined that the time period between 18 June 2014 and 11 July 2016 was properly excluded." (AE 058A at 11). The Commission heard argument on this motion on 12 July 2016 at U.S. Naval Station, Guantanamo Bay, Cuba.[4]

2. In AE 058, the Defense focused much of their argument on the Sixth Amendment right to a speedy trial. (*See* AE 058A at 6–12). As noted during oral argument, the Commission limits the scope of the issue before it and its ruling to attribution of delay under Rule for Military Commissions (R.M.C.) 707. The Defense is free to raise the Sixth Amendment speedy trial issue at a later date.

[1] The Defense raised the issue collaterally in these two motions for continuances.
[2] *See* Unofficial/Unauthenticated Transcript of the *US v. Abd al Hadi al-Iraqi* Motions Hearing (Transcript) Dated 17 May 2016 from 12:07 P.M. to 12:43 P.M. at p. 766.
[3] The Military Judge will continue to refer to the Accused as Mr. Hadi al Iraqi. *See* Transcript at 679.
[4] *See* Unofficial/Unauthenticated Transcript of the *US v. Abd al Hadi al-Iraqi* Motions Hearing Dated 12 July 2016 from 10:44 A.M. to 11:25 A.M. at pp. 846–61.

3. Under R.M.C. 707(c), "delays approved by the military judge in accordance with subsection (b)(4) of this rule, or by the convening authority, shall be excluded when determining whether any time period in section (a) of this rule has run." The Commission has ruled all delay up to this point is excludable.[5] R.M.C. 707 is comparable to Rule for Courts-Martial (R.C.M.) 707. The Court of Appeals for the Armed Forces stated, "the current version of R.C.M. 707 focuses on whether a period of time is excludable because a delay has been granted, which is in contrast to the prior version that focused on a determination as to which party was responsible for the delay." *United States v. Lazauskas*, 62 M.J. 39, 41 (C.A.A.F. 2005). The Defense's requested relief of "attribution of delay" to the government is a long-superseded concept of military statutory speedy trial law. It is not a cognizable basis for relief under R.M.C. 905, 906, 907 or any other Rule for Military Commissions.

4. The Defense request that all delay be attributed to the Government until such time as all Defense team personnel have their security clearances adjudicated and all discovery is produced is **DENIED**.

So **ORDERED** this 19th day of August, 2016.

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

[5] *See* AE 015, AE 015C, AE 015D, AE 015E, AE 015G, AE 015H, AE 015J, AE 015M, AE 015N, AE 015S, AE 015V, AE 016, AE 022, AE 031, AE 033, AE 046, AE 051, AE 054, AE 055, AE 056, and AE 056B.