

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA

v.

ABD AL HADI AL-IRAQI

AE015A

Defense Motion
For Modification of
Scheduling Order

18 July 2014

1. Timeliness

This Motion is timely filed pursuant to Rule for Military Commission (R.M.C.) 905(b) and Military Commissions Trial Judiciary Rule of Court (R.C.) 3.7.

2. Relief Sought

The defense requests the Military Judge reconsider and modify his scheduling order of 9 July by extending the deadline for filing of purely legal motions until 1 October, with the possibility of reducing the number of hearing dates scheduled for September 15 – 19 and expanding the number of days of hearing currently scheduled in November 2014 to accommodate argument of legal motions.

3. Burden of Proof

The burdens of proof and persuasion are on the defense as the moving party. R.M.C. 905(c).

4. Facts

On 9 July 2014, the Commission issued a scheduling order requiring the Defense to file any “law motions and systemic challenges... no later than 8 August 2014.” As noted in the Defense’s proposed trial schedule, the lead counsel for the defendant will be leaving active duty on 30 September 2014. We anticipate that a new lead counsel will report to the Office of the Chief Defense Counsel no sooner than 31 July 2014.

Lead Counsel, LTC Chris Callen is currently TDY to the U.S. Army War College until 28 July. This TDY was scheduled well in advance of referral of charges.

Hearings are currently scheduled for 4 through 15 August in the other two ongoing commissions' cases. During these hearings it is almost impossible to meet with other clients not in hearing due to JTF-GTMO manning constraints. Therefore, new lead counsel would almost certainly not have met the Accused prior to the current deadline for filing of legal motions, and might very well be meeting the client for the first time at the currently scheduled September hearings. Security clearance adjudication procedures are also due consideration as they will affect the new lead counsel's ability to meet the client and attend any hearings in the Expeditionary Legal Center, Courtroom 2 in Guantanamo Bay.

5. Argument

Given the complexity of the legal issues involved in this case, especially in light of the recent en banc decision in *Al Bahlul v. United States*, we believe that setting such a short deadline for systemic challenges to the charges against the defendant substantially infringes his right to effective assistance of counsel. The defendant should not be prejudiced by the unfortunate timing of referral in his case that will require transition to a new lead counsel right at the beginning of his case. Extending the deadline for filing of purely legal motions not dependent on discovery to 1 October will allow the defendant's new counsel an opportunity to review the case and fully brief those motions in anticipation of argument at the currently scheduled November hearings. The defense would have no objection to the possibility of extending the November hearing dates to accommodate further argument.

Furthermore, the 9 July scheduling order requires the Government to provide discovery no later than 1 September 2014. Assuming that the commission will hear oral argument regarding the Government's proposed Protective Order No. 3 during the September hearing, and based on the Government's previous statements that they cannot provide discovery until the protective order is issued and the MOU signed, it does not seem possible for the Government to

meet that deadline. Therefore, the defense does not believe there is truly any prejudice to the efficient administration of the case in extending the deadline for filing of legal motions.

Finally, R.M.C. 906(b) allows the military judge to grant continuances and the notes to that rule provide that the “military judge should, upon a showing of reasonable cause, grant a continuance to any party for as long and as often as is just... reasons for a continuance may include: insufficient opportunity to prepare for trial...” The Defense therefore requests the Commission find that this delay be considered excludable delay in accordance with R.M.C. 707(b)(4)(E)(i) and R.M.C. 707(c), and find that the resolution of the issues which required the delay outweighs the interests of the public and the accused in a prompt trial.

6. Request for Oral Argument

The Defense does not request oral argument.

7. Witnesses

None.

8. Certificate of Conference

The Defense has conferred with the Government on this motion and they have indicated that they have no objections.

9. Attachments

A. Certificate of Service, dated 18 July 2014

Respectfully Submitted,

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CHRIS F. CALLEN, LTC, USAR
Detailed Defense Counsel

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ROBERT B. STIRK, Maj, USAF
Assistant Detailed Defense Counsel

ATTACHMENT A

