

UNITED STATES OF AMERICA )  
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)  
v. )  
)  
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)  
OMAR AHMED KHADR )  
a/k/a "Akhbar Farhad" )  
a/k/a "Akhbar Farnad" )  
a/k/a "Ahmed Muhammed Khali" )

**RULING**  
**Defense Motion**  
**For a Continuance**  
**D093**

1. The Defense requests the Commission to grant an indefinite continuance in these proceedings. The Government opposes this motion.
2. The Defense has not provided an adequate factual or legal basis for an indefinite continuance. The Defense has had a substantial period of time to prepare for this case. Accordingly, the Defense motion for an indefinite continuance is denied. The Commission finds and orders as follows:
  - a. The Defense has sufficient information in order to file a motion to suppress any statements by the accused in accordance with Military Commission Rules of Evidence (MCRE) 304. The Defense will file any such motion no later than 7 November 2008. The Government will file any response no later than two weeks after the Defense brief is filed.
  - b. If necessary, the Defense may be required to file more specific grounds for any motion to suppress in accordance with MCRE 304(d)(3). The Commission notes that under MCRE 304(e), once the Defense files a motion to suppress, the prosecution has the burden of establishing the admissibility of the evidence. The Commission interprets that provision to require the Government to call witnesses or present some evidence to meet its burden without the requirement of the Defense to first present matters on the admissibility of any of the accused's statements in light of MCRE 304(f).
  - c. Counsel will provide the Commission any proposed voir dire questions to the panel members no later than 3 weeks prior to the start of the suppression motion.
  - d. Counsel will provide the Commission proposed findings instructions and potential sentencing instructions no later than 3 weeks prior to the start of the suppression motion. The Commission will provide counsel with a copy of the opposing counsel's proposed instructions after they have been filed with the Commission.
  - e. The Government will provide Dr. Porterfield with the correct web site no later than 31 October 2008 in order for her to provide the appropriate information for a background check in order to obtain an appropriate security clearance. Dr. Porterfield will fill out the appropriate web based forms no later than 7 calendar days after being provided the

correct web site. If Dr. Porterfield fails to meet this deadline, the Commission may find that the Defense has waived the opportunity for Dr. Porterfield to have access to any classified material, assuming without deciding, that such access is necessary for an adequate evaluation.

f. As discussed at the hearing on 22 October 2008, the Defense has already submitted a list of witnesses to the Government which it requests the Government to produce. The Commission is not ruling on the production of any of those witnesses as that issue is not yet properly before the Commission. The Defense will provide the Government with a list of any additional witnesses it is requesting the Government to produce no later than 7 November 2008.

3. The hearing dates and trial dates are as follows:

a. The suppression motion will begin on 19 January 2009.

b. The trial will begin on 26 January 2009.

c. Counsel for either side may request additional hearings, but must do so in a written request no later than 14 November 2008.

4. This ruling supersedes the scheduling order dated 15 September 2008.

So Ordered this 23rd day of October 2008.



Patrick J. Barrish  
COL, JA  
Military Judge