

Sent: Fri Jan 16 20:57:11 2009

Subject: CORRECTED SUBMISSION - GOVERNMENT JOINING MOTION FOR CONTINUANCE,  
U.S. v. MOHAMMED, et al (U)

UNCLASSIFIED

Trial Judiciary,

Please pass the urgent request below to the military judge.

The Prosecution respectfully requests that the Military Judge reconsider his rulings on D-079 and D-085 and grant the Defense motion for a continuance for the following reasons:

First, the Prosecution had endeavored to conduct and complete the RMC 909 hearing for Mr. Bin al Shihb within the three days allotted for commission proceedings next week. The commission's 15 January email, setting forth the matters to be addressed at next week's session indicates that, given certain discovery issues, it appears unlikely that all relevant evidence can be presented during the session, presumably requiring another session. It is in the best interests of all parties that the RMC 909 mental competency hearing be held during one continuous session, and that that session be close in time to the trial. In addition, as the commission is aware, the Prosecution has been unable to secure the testimony of certain requested defense witnesses through either in-person or VTC testimony (making a secure telephonic appearance by those witnesses the only option for next week - something to which the Defense has objected).

Second, the government cannot represent with confidence that there will not be an interruption in all commission proceedings.

Therefore, in light of the current posture of the case, the fact that the commission and parties would benefit from an uninterrupted hearing at one session of the commission, and that - in the absence of a complete RMC 909 hearing - judicial economy militates against proceeding with next week's session only for the purpose of addressing the other issues on the agenda, the Prosecution urges the commission to reconsider and grant the Defense requests for a continuance. The Prosecution believes that the interests of justice would be served by taking this action and that they outweigh the best interests of both the public and the accused in a hearing commencing on 19 January. As such, the Prosecution believes that any such time is excludable delay under RMC 707(c).

We apologize for the lateness of this submission.

On behalf of the prosecution.

Lawrence J. Morris  
COL, JA  
Chief Prosecutor