

United State of America)	
)	D-023
)	
v.)	Ruling on Defense Motion
)	for a Continuance
Ahmed Mohammed Ahmed Haza)	
Al Darbi)	7 May 2009
)	
)	

1. On 5 May 2009, via email, the defense requested special relief in the form of a delay from the presently scheduled hearing date of 27 May 09 to 8 Jul 09 for the following reasons:

a. Mr. Kassem, Lead Counsel, will be out of country on previously arranged trips on the scheduled date and through the first part of June. In addition, Mr. Kassem has a trial scheduled for 30 Jun and this is the only time he is available in June. The difficulty in scheduling matters at GITMO revolves around the fact that attending any hearing requires at least 3 business days, effectively requiring an entire business week to be specially scheduled.

b. Lt Col Pyle, Associate Counsel, is also unavailable on the 27 May date due to a previously scheduled TDY and leave for which expenses have already been incurred.

2. The defense avers that the delay request was not made with the intent of unnecessarily delaying this proceeding and that the government does not object to the request.

3. Chronology.

a. The last hearing in this case was held on 15 December 2008. At that time, a motion hearing was scheduled for early March, 2009. The motion hearing was anticipated to last approximately three weeks. Assuming the motions were not case dispositive, the trial would commence immediately following the motion hearing. The government had stated it needs two/three months lead time before the hearing to coordinate witness production.

b. Subsequently, on 23 January 2009, the government requested a delay to permit the new Administration to review the Commission procedures. In its response on 30 January 2009, the defense did not oppose the delay if the Commission was not going to dismiss the charges.

c. On 13 February 2009, the Commission granted the delay request to 20 May with the next hearing set for 21 May 2009 at GITMO. In its order the Commission stated, "The next hearing will be held at 0900 hours on 21 May 2009. Both parties should be prepared to litigate all outstanding issues at that time."

d. On 27 April 2009, the Commission issued an order to hold the next hearing on 27 May 2009. The hearing would address a number of issues including updating the trial schedule. The 27 May hearing will last no more than one day and would not address the substance of the pending motions.

3. Discussion.

a. The defense was on notice since 13 February that a hearing in this case was scheduled for 21 May. At the time, the hearing was anticipated to last at least three weeks as noted in the order that “(b)oth parties should be prepared to litigate all outstanding issues at that time.”

b. The hearing was adjusted to last one day, 27 May, which is well within the three week window the defense was on notice they needed to be at GITMO.

c. The defense in this case has made the trip to GITMO on more than one occasion. It has always taken three business days to travel to and from GITMO. There is no additional travel time for the 27 May hearing than there would have been for any other hearing in Cuba.

d. Since 13 February, the defense apparently scheduled other activities in lieu of appearing in this case in late May. The Commission fails to understand why it should grant a delay in a previously scheduled hearing because counsel chose to create scheduling conflicts after being on notice of the hearing date.

e. In addition, delaying a relatively straight forward hearing for six weeks, as requested by the defense, would necessitate an additional two/three month delay after 8 July for the witness coordination necessary for the motions hearing. The Commission understands that the witness coordination delay is inevitable but believes it should be addressed sooner, i.e., 27 May, rather than later. i.e., 8 July.

4. Based on the proffered rationale and the more than three months notice that a hearing would be held in late May 2009, the defense request for delay is hereby DENIED.

5. The Commission authorizes the public release of this order.

So ordered this 7th day of May, 2009.

//signed//
JAMES L. POHL
COL, JA, USA
Military Judge