

United State of America)	P-014
)	
v.)	Ruling on Government Motion
)	for a Continuance
Ahmed Mohammed Ahmed Haza)	
Al Darbi)	19 May 2009

1. I have reviewed and considered:

- a. The government motion, with attachments, for a continuance, dated 15 May 2009.
- b. The Commission's previous continuance order, dated 13 February 2009.
- c. The Commission's docketing order, dated 27 April 2009.

2. Law. Once the Convening Authority has referred a case to trial by Military Commission, Congress and the Secretary of Defense have invested in the Military Judge the sole authority to grant continuances. (Military Commission Act, 10 U.S.C. §949e; Rule for Military Commission (R.M.C.) 706(b)(4)(E)(i)).

3. Discussion.

a. IAW R.M.C. 707(b)(4)(E)(ii)(A), a continuance should be granted only if Military Judge specifically finds that the interests of justice are served by granting a continuance and those interests outweigh the best interests of the public and the accused in a prompt trial.

b. On 13 February 2009, the Commission granted the government a continuance until 20 May 2009 to permit the new Administration to review Military Commissions and the disposition of individual detainees. As a result of that review, the Administration has proposed a number of changes in the Military Commissions to take effect on 14 July 2009. The Administration is also considering other potential reforms and anticipates completing the Detention Policy Review by 21 July 2009.

c. The government has requested a second 120 day continuance to complete its review and implement changes. The defense has not filed a response, but the government's motion states that the defense does not oppose this continuance.

d. In its order setting 27 May 2009 for the next session, the Commission stated, "In setting this date, the Commission is not trying to influence the Administration's review. If there are changes between now and 27 May 2009, the Commission will consider adjusting/cancelling the hearing." There are now proposed changes which would significantly impact further proceedings. As such, good cause exists to postpone the next session in this case.

4. I find:

a. The requested delay in the next hearing is until 24 September 2009.

b. On its face, the request to delay the next hearing is reasonable.

c. Granting the continuance will serve the interests of justice because it will permit the Administration time to implement changes, complete the Detention Policy Review, and finish its review of individual cases. A continuance until 24 September 2009 is a reasonable time to accomplish these actions.

d. The best interests of both the public and of the accused in a prompt trial will be not harmed by the requested delay of the next hearing, and are outweighed by the reasons for granting the requested continuance.

e. For purposes of R.M.C. 707(b)(4)(E)(ii)(B), the government is responsible for the delay from 20 May 2009 until 24 September 2009.

5. The government request for a continuance in the next hearing until 24 September 2009 is GRANTED.

6. The next hearing will be held at 0900 hours on 25 September 2009. Parties will be prepared to litigate all outstanding issues at that time. The Commission reserves the right to issue interlocutory orders and conduct pretrial proceedings, if necessary, during the continuance period. The Commission is concerned that the granting of this second long continuance will result in the parties having done nothing to prepare this case for trial for eight months. The Commission expects that once this continuance expires, both sides will be fully prepared to expeditiously litigate this case, and both sides will have fully complied with their discovery obligations during the period of the continuance. The Commission recognizes the logistical challenges of conducting hearings in this case. As such both sides should ensure not to schedule any conflicts with the hearing date.

7. The Commission authorizes the public release of this order and supporting pleadings.

So ordered this 19th day of May, 2009.

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