

UNITED STATES OF AMERICA

v.

KHALID SHEIKH MOHAMMED, WALID  
MUHAMMAD SALIH MUBARAK BIN  
'ATTASH, RAMZI BIN AL SHIBH, ALI  
ABDUL AZIZ ALI, MUSTAFA AHMED  
ADAM AL HAWSAWI

P-012

Commission Ruling Regarding Prosecution  
Motion for Additional 60-Day Continuance  
and Scheduling Order for 21 September  
2009 Commission Session

1. On 21 January 2009, over defense objection, this Commission granted a government motion for a 120-day continuance in this case. On 14 May 2009, the Commission granted, again over defense objection, a second government delay for an additional 120 days, but did docket a session to run 21 through 25 September 2009 to begin receiving evidence on the pending Rule for Military Commission (RMC) 909 incompetence determination hearing for Mr. bin al Shibh.
2. On 16 September 2009, the government filed a third request asking the Commission to: (1) grant an additional 60-day delay and (2) continue the scheduled RMC 909 incompetence hearing to begin no earlier than 16 November 2009. The detailed defense counsel for Mr. bin al Shibh did not oppose the motion to continue the RMC 909 hearing, which the Commission subsequently granted on 17 September 2009. Detailed defense counsel for Messrs. bin al Shibh and al Hawsawi also did not oppose the 60-day continuance. Since the Commission had not received a formal reply from the three *pro se* accused

regarding the government's third continuance request, it scheduled today's session to hear argument on this part of the government motion. Since the subject involved a matter which affected each of the five accused, all were invited to attend. However, on 21 September 2009, the Commission received a translated filing from Messrs. Sheikh Mohammed, bin Attash and Ali, dated 18 September 2009, in which they stated they do not object to the 60-day continuance. Therefore, the unopposed motion for a 60-day continuance is thereby GRANTED.

3. What remains are the pending *pro se* filings which are not joined by and do not relate to Messrs. bin al Shibh and al Hawsawi. Accordingly, only the three *pro se* accused that have joined in the motions being heard,<sup>1</sup> their standby counsel and government counsel may be present in the courtroom. In other words, because Messrs. bin al Shibh and al Hawsawi would have no right to attend this proceeding if the cases were being tried separately, they are not authorized to attend this session of the Military Commission.<sup>2</sup>

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<sup>1</sup> The *pro se* filings are: D-105 (Dismiss Military Standby Counsel and Civilian Legal Advisors - Mohammed); D-109 (Compel Arabic Translation of All Commission Sessions); D-110 (Public Release of All Prior Commission Sessions); D-111 (Compel Research Supplies and Materials), D-112 (Receive Matters from Standby Counsel); D-113 (Dismiss Military Standby Counsel and Civilian Legal Advisors – Ali); D-114 (Boycott of SJA and Commission Sessions); and D-127 (Dismiss Military Standby Counsel and Civilian Legal Advisors – bin Attash).

<sup>2</sup> The privilege of attending every proceeding is never absolute. Assuming, but not deciding, that the Due Process Clause of the Fifth Amendment applies to the accused in this case, a defendant is not required to be granted the privilege of attending every hearing or session of court. See, e.g., *Kentucky v. Stincer*, 482 U.S. 730 (1987). Due process only requires that “a defendant be allowed to be present ‘to the extent that a fair and just hearing would be thwarted by his absence’”. *Snyder v. Massachusetts*, 291 U.S. 97, 108 (1934). In this case, given the Commission has granted the unopposed motion for a 60-day continuance, the 21 September 2009 session will now only address motions filed by the three *pro se* accused. Accordingly, Messrs. bin al Shibh and al Hawsawi are not necessary to resolve the legal issues to be

4. The Military Commission directs that a copy of this order be served upon each accused, the prosecution and all civilian and military defense counsel of record, and that it be provided to the Clerk of Court for public release. The Military Commission further directs the Clerk of Court to have this order translated into Arabic and served upon each of the above named accused.

So ordered this 21<sup>st</sup> Day of September 2009:

/s/  
Stephen R. Henley  
Colonel, U.S. Army  
Military Judge

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addressed; their presence would not contribute to the fairness the proceeding; and their attendance has no reasonably substantial relation to an issue that involves them personally.