

**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**

**GOVERNMENT MOTION**

**REQUEST FOR 120-DAY CONTINUANCE IN  
THE INTERESTS OF JUSTICE**

**Proposed Findings of Fact and Conclusions of  
Law**

**xx January 2009**

1. On 20 January 2009, the Government moved for a continuance until 20 May 2009 of further proceedings in this military commission (P-\_\_\_).
2. On xx January 2009, the Defense responded to the Government's motion (D-\_\_\_).
3. After reviewing the briefs of the parties, and the entire record, the Military Commission finds the following facts:
  - a. On 20 January 2009, Barack H. Obama took the oath of office as President of the United States. As such, President Obama is the Commander-in-Chief of the United States Armed Forces.
  - b. The Honorable Robert Gates continues to serve as the Secretary of Defense.
  - c. On 20 January 2009, by order of President Obama, Secretary of Defense Gates directed the Chief Prosecutor of the Office of Military Commissions to seek continuances of 120 days in any case that had been referred to military commission.
  - d. The Secretary of Defense issued his order to the Chief Prosecutor in order to provide the Administration sufficient time to conduct a review of detainees currently held at Guantánamo Bay, Cuba, to evaluate the cases of detainees not approved for release or transfer to determine whether prosecution may be warranted for any offenses those detainees may have committed, and to determine which forum best suits any future prosecution.
  - e. President Obama intends for a thorough review of the cases referred to military commissions, as well as of the entire military commissions process, generally, to be conducted.
  - f. Implicit in this review is the possibility that the Administration may forego prosecution in certain cases altogether, move prosecution of some or all cases to federal district courts, and/or make changes to the rules and procedures applicable to military commissions.

- g. Conducting further proceedings in the case *sub judice* during the pendency of the Administration's review would likely result in expending effort and resources to litigate issues that might later be rendered moot, or that might need to be re-litigated, due to changes in the rules or procedures, or otherwise produce legal consequences affecting the options available to the Administration in its review.

4. Based upon the foregoing facts, the Military Commission reaches the following conclusions of law:

- a. Continuing the proceedings in the case *sub judice* until 20 May 2009 is in the interests of justice, because it will permit the newly inaugurated President to conduct a thorough review of the military commissions process, and the cases pending before such commissions, including this case, without the pressures that would likely result from contemporaneous proceedings before a military commission.

- b. The interests of justice served by a 120-day continuance in this case outweigh the best interests of both the public and the accused in a prompt trial.

- c. Indeed, a 120-day continuance during the pendency of a review of the military commissions process is affirmatively in the interests of both the public and the accused, as it will avoid wasted effort in litigating issues that might be rendered moot or need to be re-litigated by the outcome of that review, advance judicial economy, and prevent legal consequences that might affect the options available to the Administration as part of its review. Further, changes in the military commissions procedures that could result from a review of the commissions process might inure to the benefit of the accused.

- d. The Government has not requested this continuance for the purpose of obtaining unnecessary delay, or for any other inappropriate reason.

- e. The continuance requested by the Government is not for an unduly long period of time.

- f. This delay should be excluded when determining whether any time period under Rule for Military Commission (R.M.C.) 707(a) has run.

5. Wherefore, it is this 20<sup>th</sup> day of January 2009, by this military commission

**ORDERED:**

1. That further proceedings in this military commission are continued until 0900 hours, Wednesday, 20 May 2009.

2. That all delay between today and 20 May 2009 shall be excluded when determining whether any time period under R.M.C. 707(a) has run.

Stephen Henley  
COL, JA, U.S. Army  
Military Judge