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-009** Commission Ruling Regarding Government Motion for 120-Day Continuance

1. This matter having come before the Commission upon government motion to grant a 120-day continuance in the case until 20 May 2009; and the Commission having heard oral argument; and having considered the parties' written submissions; and for good cause shown; the Commission finds that the interests of justice served by continuing the proceedings to allow the new Administration sufficient time to review the Military Commission's process and decide the proper forum to prosecute the accused or to make appropriate changes to the current commission rules and procedures and avoid unnecessary duplication of effort outweigh the best interests of the accused and public in a prompt trial.

2. The government's motion to continue all military commission sessions to 20 May 2009 is therefore GRANTED.

So ordered on this 21st day of January 2009:

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

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** **20 January 2009**

1. **Timeliness:** This motion is timely filed.

2. **Relief Requested:** In the interests of justice, and at the direction of the President of the United States and the Secretary of Defense, the Government respectfully requests the Military Commission grant a continuance of the proceedings in the above-captioned case until 20 May 2009.[1]

3. **Overview:** In order to permit the newly inaugurated President and his Administration time to review the military commissions process, generally, and the cases currently pending before military commissions, specifically, the Secretary of Defense has, by order of the President, directed the Chief Prosecutor to seek continuances of 120 days in all pending cases.

4. **Burden and Persuasion:** As the moving party, the Government bears the burden of persuasion. *See* RMC 905(c).

5. **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. The Honorable Robert Gates continues to serve as the Secretary of Defense.

b. On 20 January 2009, following the inauguration of President Obama, and by order of the President, the Secretary of Defense directed the Chief Prosecutor of the Office of Military Commissions, *inter alia*, to seek continuances of 120 days in any case that had been referred to military commission.[2]

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[1] The Government will be requesting a continuance until on or about 20 May 2009 in all pending military commissions cases.

[2] Both the President's order and the Secretary's direction to the Chief Prosecutor are oral as of the filing of this motion. The Prosecution expects to receive a copy of a Memorandum from the White House Counsel relaying the President's order to the Secretary and a written order memorializing the Secretary's order to the Chief Prosecutor within the next two days. The Government will file these documents with the military commission at its earliest opportunity.

c. 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.

6. Argument:

a. Rule for Military Commission 707(b)(4)(E)(i) authorizes the military judge of a military commission to grant a continuance of the proceedings in a pending case if the interests of justice are served by such action and outweigh the best interests of both the public and the accused in a prompt trial of the accused. R.M.C. 707(b)(4)(E)(i).

b. The requested continuance is in the interests of justice, as it will permit the newly inaugurated President and his Administration to undertake a thorough review of both the pending cases and the military commissions process generally.

c. The interests of justice served by granting the requested continuance outweigh the interests of both the public and the accused in a prompt trial. While both the public and the accused have an interest in a prompt trial of this case, granting a continuance of the proceedings is affirmatively in the interests of both the accused and the public, as the Administration's review of the commissions process and its pending cases may result in changes that would (1) render moot any proceedings conducted during the pendency of the review, (2) necessitate re-litigation of issues, or (3) produce legal consequences affecting the options available to the Administration following 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.

7. Conclusion: For the foregoing reasons, the military commission should grant a continuance of further proceedings in the above-captioned case until 20 May 2009, and adopt the attached Findings of Fact, Conclusions of Law, and Order.

8. Oral Argument: The Government does not request oral argument, but is prepared to argue should the commission find it helpful.

9. Attachments:

A. Proposed Findings of Fact and Conclusions of Law.

10. <u>Submitted by</u>:

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Clay Trivett
Prosecutor