

UNITED STATES OF AMERICA)
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 v.) **Defense Response**
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 ABD AL-RAHIM HUSSEIN MUHAMMED) to Government Motion For 120
 AL-NASHIRI) Day Continuance.
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1. **Timeliness:** This response is filed within the timeframe established in Rules of Court (RC) 3.
2. **Summary:** The defense does not oppose a continuance in this case, but opposes the government's specific request that the continuance "halt all proceedings in this matter, including but not limited to all pending motions, future motions, court proceedings and discovery disclosures[.]" (Gov't Motion at) This Court has the authority under the Military Commissions Act and the Rules for Military Commissions to grant a continuance, but there is no authority for the government's specific relief. Moreover, the interest of justice and judicial economy demand that this Court not grant such a broadly worded and sweeping continuance request.
3. **Facts:** The Defense concurs with the government's recitation of facts.
4. **Argument:** M.C.A §949e and R.M.C. 707 authorize the military judge to grant continuances. But neither of these provisions authorizes more. And no other interpretation can be ascertained from a plain reading of the M.C.A or the R.M.C. In fact, the only provision that grants this Court the authority to stop or

halt the proceedings is R.M.C. 703. Yet this rule only relates to the availability of evidence.

The government cites to both the President's Executive Order and the Secretary of Defense's memorandum as support of its motion. But both the order and the memorandum suffer from the same fate: they do not authorize this Court to extend its authority to continue cases as far as the government wishes.

First, the Executive Order authorizes the Secretary of Defense to take steps to halt the proceedings in cases that have been referred. There is nothing in the four-corners of the order that permits a permutated continuance request to be this catalyst. Notably, the Secretary of Defense can give effect to the Executive Order by withdrawing the charges before this Court.

And second, the Secretary of Defense's memorandum merely authorizes the prosecution to seek a continuance. The government complied with this memorandum in filing their motion, but there is nothing in the memorandum that grants this Court the authority to halt all the proceedings before it.

The interest of justice may call for the continuing of this case. However, the interest of justice also calls for this Court to reject the government's request for a broad and sweeping order. If this Court were to essentially shut its doors then the Defendant is left without a forum to address any

of its issues that pertain to this case. Defense's Motion D002 is an example of such important and pressing issues. Moreover, according to the Secretary of Defense's memorandum, the government, aided by the full force of the agencies of the United States, is free to continue to investigate and evaluate these cases. But the defense is left in silence to contemplate what evidence the government may have against its client, while the government fine tunes its case.

Also, judicial economy demands that this Court reject the government's sweeping language. The government cannot state with certainty that this case will not be back before this commission. If such is the case and the government's motion is granted then the Defense would be without discovery for over four months. Also, even if this case were to proceed in another forum, the Defense included in its motion for continuance (D001) a cleared counsel election form from Mr. Al-Nashiri. This election gives the current counsel the authority to represent Mr. Al-Nashiri in all forums.

5. **Conclusion.** In sum, the Defense does not object to the government's continuance request, but opposes its request that the continuance "halt all proceedings in this matter, including but not limited to all pending motions, future motions, court proceedings and discovery disclosures[.]"

6. **Oral Argument.** The Defense does not request oral argument in this case.

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