

MILITARY COMMISSIONS GOOD ENOUGH FOR TEEN ACTING IN SELF- DEFENSE, BUT NOT ALLEGED COLE BOMBER

The WaPo reports that the Administration has shelved plans to try Abd al-Rahim al-Nashiri in military commissions.

The decision at least temporarily scuttles what was supposed to be the signature trial of a major al-Qaeda figure under a reformed system of military commissions. And it comes practically on the eve of the 10th anniversary of the attack, which killed 17 sailors and wounded dozens when a boat packed with explosives ripped a hole in the side of the warship in the port of Aden.

In a filing this week in the U.S. Court of Appeals for the District of Columbia, the Justice Department said that “no charges are either pending or contemplated with respect to al-Nashiri in the near future.”

The statement, tucked into a motion to dismiss a petition by Nashiri’s attorneys, suggests that the prospect of further military trials for detainees held at Guantanamo Bay, Cuba, has all but ground to a halt, much as the administration’s plan to try the accused plotters of the Sept. 11, 2001, attacks in federal court has stalled.

Only two cases are moving forward at Guantanamo Bay, and both were sworn and referred for trial by the time Obama took office. In January 2009, Defense Secretary Robert M. Gates directed the

Convening Authority for Military Commissions to stop referring cases for trial, an order that 20 months later has not been rescinded.

Which of course means that our government (though the article suggests this is a distinction between the Bush and Obama Administrations, since Gates—though he spans both Administrations—has not ordered the Convening Authority to start referring cases) has decided it's okay to try Omar Khadr, who was 15 and arguably acting in self-defense for his alleged crime, in a military commission. But not to try al-Nashiri, at least allegedly a genuine terrorist.

To be fair, the WaPo suggests the Administration is holding off until it can have civilian trials for other High Value Detainees (presumably, still the 9/11 conspirators). So it may well be a supportable goal. But it all seems to add to the Kangaroo stench around the military commissions.