

ABD AL RAHIM AL-NASHIRI DELAYS HIS OWN TRIAL UNTIL AFTER PRESIDENTIAL ELECTION

As Muna Shikaki and Carol Rosenberg just tweeted, Abd al Rahim al-Nashiri requested—and the military judge granted—that his trial not start until November 9, 2012. Which would put it several days after the Presidential election.

The logic for this decision seems clear to me. First, the government has made it clear al-Nashiri won't be released if he is acquitted in any case. Add in the fact that the punishment jail is, at least for some prisoners, worse than the detention jail at Gitmo, and postponing the trial might actually improve al-Nashiri's conditions until such time as the government convicts him (even assuming the military court doesn't decide to execute him). And if the government does decide to go ahead with other case, rules on things like hearsay may have evolved.

I also suspect the delay will mess with Obama Administration plans for the roll-out of the military commissions. They had picked al-Nashiri's case to be the first. Now, they'll either have to delay all the other trials, including that of the 9/11 plotters, or they'll have to test out their new system on detainees whose cases might be even more legally difficult than al-Nashiri's. Furthermore, the delay will heighten Obama's failure to make good on his promise to close Gitmo.

Frankly, the people who get most screwed by this move are the families of USS Cole victims. They've been waiting for a decade already for justice; this puts off that time for another year.

But that's part of the problem with the Gitmo Show Trials. The government claims,

simultaneously, that these trials deliver some kind of justice but also that it can hold someone who has been acquitted, which takes away any incentive for detainees to press for a speedy trial. And since there's not a law allowing the government to impose a speedy trial—but rather a protection giving a prisoner a speedy trial unless he waives it—it'll be interesting to see whether the Administration pushed back against this (the Prosecutor has apparently already accepted it).

Update: As bmaz points out, al-Nashiri is also suing the Convening Authority for trying him in a military court for alleged crimes that did not happen during a war.

The only question this Court must answer is a pure question of law. Did the President or Congress choose to invoke their war powers and apply the law of war in Yemen at any time relevant to the allegations against Plaintiff? The answer is no.

Plaintiff therefore asks this Court to enter a judgment declaring that the Defendant has exceeded his authority by issuing military commission orders for alleged crimes that did not occur in the context of an armed conflict subject to the laws of war.

The delay will also allow this suit to move forward.