



NIMJ BRIEFS ON THE GUANTÁNAMO MILITARY COMMISSIONS

Speedy Trial

Ruling:

- *United States v. Hamdan*, 1 M.C. 137 (2008) (Ruling on Motion to Dismiss: Speedy Trial)

The Sixth Amendment to the United States Constitution provides: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...” At his military commission hearings, Salim Hamdan argued he had been denied this right.

Hamdan was captured driving a vehicle containing weapons in Afghanistan on November 24, 2001, and detained as an enemy combatant. Later, the U.S. accused Hamdan of being Osama bin Laden’s bodyguard and personal driver. During Hamdan’s military commission, Judge Allred provided a chronology of a few milestones in the case:

The President designated Hamdan for trial by military commission on July 3, 2003;

Defense counsel was appointed for him on 18 December 2003;

The District Court for the District of Columbia granted Hamdan’s request for a writ of habeas corpus, granting relief on November 8, 2004, 344 F. Supp. 2d 152 (D.C. 2004);

The Court of Appeals for the District of Columbia Circuit denied his petition on 11 February 2005, and reversed the District Court on 15 July 2005, 415 F. 3d 33 (D.C. Cir. 2005); 2005 U.S. App. LEXIS 14315;

The Supreme Court granted certiorari on 7 November 2005, 546 U.S. 1002 (2005), authorizing trial by military commission for unlawful enemy combatants;

Charges against Mr. Hamdan in the instant case were sworn on 5 April 2007 and referred for trial on 10 May 2007. He was arraigned before this Military Commission, authorized under the Military Commissions Act of 2006, on 6 June 2007.

U.S. v. Hamdan, 1 M.C. 137 (2008).

Judge Allred did not need to decide the issue of whether the Sixth Amendment reached Guantanamo Bay because he ruled that Hamdan had not been denied a speedy trial.

***Barker v. Wingo* factors:**

- (1) the length of the delay;
- (2) the reasons for the delay;
- (3) whether the accused made a demand for a speedy trial; and
- (4) prejudice to the accused.

In *Barker v. Wingo*, 407 U.S. 514 (1972), the right to a speedy trial was labeled “fundamental.” Unlike other rights, however, the right to a speedy trial also encompasses a “societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused.” *Barker* at 522. “Thus, unlike the rights to counsel or the right to be free from compelled self incrimination, deprivation of the right to speedy trial does not *per se* prejudice the accused’s ability to defend himself.” *Id.* Further, the right is more vague than other procedural rights, since it is difficult for a court to “say how long is too long in a system where justice is supposed to be swift but deliberate.” *Id.*

Judge Allred analyzed the case against each of the four *Barker* factors. First, the length of delay, while long, transpired against a “backdrop of actions by all three branches of our federal government that are unprecedented in our jurisprudence.” *Hamdan*, 1 M.C. 137, 138 (2008). Further, Hamdan was not in the custody of law enforcement authorities, the armed forces held him in detention pursuant to a “fundamental and accepted incident to war.” *Id.*, citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 518 (2004).

In examining the second factor, Judge Allred ruled that there were multiple reasons for the delay. *Id.* at 139. Hamdan was being held as a battlefield detainee in an ongoing conflict. While in detention, Hamdan had been the leading figure in a protracted legal challenge to the United States’ ability to try unlawful enemy combatants. Further, Judge Allred noted that the case’s significant scope and complexity involved a “worldwide search for evidence carried on during a period of national emergency and threat, the declassification of documents, interagency cooperation with numerous other federal agencies, security clearances for the defense counsel, and a host of other administrative issues not present in any other federal or military prosecution.” *Id.*

Third, the while the accused made a demand for a speedy trial on February 12, 2004, under the original military commission system, the accused “has made no further demands for speedy trial in the four years since that date.” *Id.* While the accused faced no pending charges between June 2006 and May 2007, the defense did not demand a speedy trial, “affirmatively waived the issue of speedy trial on the record... [and] requested several continuances” that the commission liberally granted. *Id.* Another important factor Judge Allred considered was that the case complied with Rule for Military Commissions 707, which requires arraignment within 30 days after referral of charges. *Id.*

Fourth, Judge Allred did not find prejudice to Hamdan. The “prevention of oppressive pretrial incarceration, minimization of the accused’s anxiety and concern, and minimization of the possibility that a delay will hinder the defense” are interests served by the right to a speedy trial. *Id.*

According to Judge Allred, while these “factors are helpful guides in civilian criminal cases where the accused is apprehended only after he has been accused of a crime, and only for the purpose of answering those charges...they are not dispositive here” because Hamdan is a battlefield detainee. *Id.* Most of the detainees in this category do not face any charges and are held as security threats to the United States, an issue unrelated to criminal prosecution. *Id.* at 140. Judge Allred also highlighted “one unlooked-for boon” from Hamdan’s extended detention: “the United States has located, captured, and brought to Guantanamo Bay no less than eight high ranking al-Qaeda leaders, several of whom are believed ready to provide exculpatory evidence on the accused’s behalf.” *Id.* In balancing the *Barker* factors, Judge Allred ruled that Hamdan had not been denied a speedy trial.