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Guantanamo Judge Delays Suspect's Tribunal 3 Months

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U.S. NAVAL BASE GUANTANAMO BAY, Cuba - Whether the soft-spoken man with an easy smile and a posture of compliance is an Al Qaeda bagman or a hapless hotel worker wrongly ensnared in the post-Sept. 11 panic was no clearer after his Tuesday tribunal appearance than when he was arrested four years ago.

The case against Abdul Zahir, who never traveled outside his native Afghanistan before being flown to the U.S. detention site for terrorism suspects here, was suspended until July to give his Army defense lawyer time to travel to the scene of the crimes with which Zahir is charged.

That means by the time his tribunal resumes, the Supreme Court will have ruled on the question of whether the Bush administration's effort to prosecute terrorism suspects here is legal.

Zahir is one of only 10 "enemy combatants" - among hundreds of Guantanamo detainees - charged with war crimes stemming from the Sept. 11 attacks. The cases have crawled through a maze of legal and moral challenges to the tribunal's legitimacy and the U.S. military jailers' interrogation techniques.

The diminutive, bearded defendant, who says he is unsure whether he is 34 or 35, shuffled into the maximum-security military courtroom between two Marines, clearly awed by the change of scenery from the daily monotony of detention.

In proceedings that lasted less than two hours, Zahir agreed to go on even without a court translator or a copy of the charges against him in his native Persian. He also said he was satisfied for now with "Colonel Tom," Army reservist Lt. Col. Thomas Bogar, who is assigned to defend him.

Zahir said little beyond "yes" and "no" to procedural questions before Marine Col. Robert S. Chester, the presiding judge, in his appearance before the first military war crimes tribunal in which the U.S. has been involved since World War II.

In a September 2004 hearing at Guantanamo to determine whether he was properly classified as an enemy combatant, Zahir painted a picture of himself as a lowly government guesthouse worker at a hotel run by Afghanistan's Taliban regime assigned to translate and run errands for an Arab who spent three years there. The Pentagon asserts that the visitor, Abdul Hadi, was a "known member of Al Qaeda."

"I never hated the United States," Zahir told his captors during that hearing. He also asserted that he had told U.S. interrogators in Afghanistan the identities of neighbors who lobbed a grenade into a car carrying journalists near Gardez in March 2002, seriously wounding a Toronto Star correspondent. Zahir is charged with war crimes for that attack and for allegedly supporting Al Qaeda by helping Hadi.

After Monday's abbreviated hearing, the military commissions' chief prosecutor, Air Force Col. Morris Davis, said the U.S. government wasn't likely to accuse Zahir of being the attacker. Two other Afghans are mentioned in the charges and presumed to be detained here.

"I don't think the evidence we are going to introduce is that he is the person who actually threw the grenade," Davis said.

Prosecutors have proceeded with the cases not specifically stayed by U.S. court orders while the Supreme Court reviews the military commissions' jurisdiction and the legality of denying the foreign defendants the protections and rights ensured in U.S. courts and military courts-martial. Four detainees face preliminary appearances this week and three more the last week of April.

Davis seemed to denigrate the questions raised at the Supreme Court hearing March 28, contending that Justice Stephen G. Breyer had argued that President Bush's declared war on terrorism "is not a war, at least not an ordinary war." A few hours after Breyer's observation, "enemy combatants launched a major attack on coalition forces in southern Afghanistan," Davis said, further noting that a 52-year-old Vermont man on his third tour of duty there was killed as a result.

"When people ask why we are holding the enemy accountable in our common-law war courts called military commissions, the answer is plain and simple: We are at war," Davis argued.

Zahir was to have entered a plea to charges of attacking civilians, aiding the enemy and conspiracy in murder, destruction of property and terrorism. But Chester postponed further proceedings until Bogar, a Philadelphia tax lawyer in civilian life, could travel to the southern Afghanistan region where Zahir is from. The defendant, in khaki trousers, laced leather shoes and a blue oxford shirt so new it still held its packing wrinkles, had contended in his detention review that the charges had "no basis."

He has made no claims of ill treatment here, but accusations of torture, humiliation and denial of due process by other prisoners have raised an international chorus of demands that the Guantanamo camp be closed and its detainees tried in established courts or returned to their home countries.

Chester noted with mild reprimand the prosecution's failure to provide Zahir with a Persian translation of the charges against him, filed nearly two months ago and based on events in early 2002.

He also gave the defendant the opportunity to adjourn at the outset because the tribunal administrators, the Pentagon's Office of Military Commissions, had failed to provide a translator. A Persian-speaking defense aide filled the breach.

Pentagon spokeswoman Maj. Jane Boomer couldn't explain the oversight.

Katherine Newell Bierman, counter-terrorism counsel for Human Rights Watch, questioned whether a Persian translator had ever been present for Zahir's extensive interrogations considering that one couldn't be found for the formal proceedings.

Lawyers for other Guantanamo detainees have converged here this week to observe the hearings, hoping to glean the strength of the prosecution's evidence and the judges' strategy for filling holes in the commissions' legal guidance.

Several of the defense lawyers say they have been encouraged by the Supreme Court session last week in which five of the eight justices hearing the case expressed doubts about the Guantanamo judicial process.