

**UNITED STATES
OF
AMERICA**

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**D-013
Ruling on Defense Motion to Dismiss for Lack of
Jurisdiction (Bill of Attainder)**

20 February 2008

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OMAR AHMED KHADR
a/k/a "Akhbar Farhad"
a/k/a "Akhbar Farnad"
a/k/a "Ahmed Muhammed Khahi"

1. The commission has considered the defense motion, the government response, and the defense reply.
2. The defense requests dismissal of all charges and specifications due to lack of jurisdiction because the Military Commissions Act of 2006 (MCA) is a Bill of Attainder.
3. In *United States v. Lovett*, 328 U.S. 303 (1946) the Supreme Court wrote: "In *Cummings v. State of Missouri*, 4 Wall. 277, 323, this Court said, 'A bill of attainder is a legislative act which inflicts punishment without a judicial trial.'" Such bills and acts are prohibited by the Bill of Attainder Clause.
4. For purposes of this ruling on this motion, the commission shall not and does not address the issue of whether or not Mr. Khadr may avail himself of the protections of the United States Constitution.
5. The defense characterization of the effect of the MCA on Mr. Khadr as "legislative punishment" is not supported by case law; nor by any logical interpretation of the historical reasons for the Bill of Attainder Clause.
 - a. The cases cited by the defense for the propositions which it asserts do not support characterization of a trial by military commission as punishment.
 - b. Insofar as the defense claims are based upon those portions of the MCA which regulate the access to civilian courts for purposes of *habeas corpus*, those portions are independent of those sections establishing the jurisdiction of and procedures for military commissions.
 - c. Insofar as the defense claims are based on procedures established by the MCA which differ from procedures in federal courts and military courts-martial, such variations

are not grounds for determining that punishment has been legislated before a trial. The commission notes that the Uniform Code of Military Justice has not been held to be a Bill of Attainder, even though certain provisions of military practice appear to be at variance with Constitutional requirements - compare place of trial under the Uniform Code with the 6th Amendment's venue rule and Clause 2 of Section III.

6. Nothing in the MCA directs that any person or any subset of persons be punished without a trial. Nothing in the trial procedures established by the MCA can be properly viewed as "punishment," as that term is used in the cases cited by the defense.

7. The defense motion to dismiss for lack of jurisdiction because the MCA is a Bill of Attainder is DENIED.

Peter E. Brownback III
COL, JA, USA
Military Judge