

UNITED STATES OF AMERICA

v.

OMAR AHMED KHADR

**Defense Motion
For a Continuance**

16 October 2008

1. **Timeliness:** This motion is filed within the timeframe established by R.M.C. 905.
2. **Relief requested:** The defense respectfully requests the Military Judge to grant a continuance of the 10 November 2008 trial date, the 5 November suppression hearing, the 17 October 2008 date for the submission of suppression motions, and all other dates on the current scheduling order.
3. **Burdens of proof and persuasion:** As the moving party, the defense bears the burden of establishing any factual issues necessary to resolve the motion by a preponderance of the evidence. R.M.C. 905(c)(2)(A).

4. **Facts:**

a. On 19 September 2008, the Military Judge granted the defense request for the appointment of Dr. Katherine Porterfield as an expert consultant/witness. The Military Judge recognized that the defense had obtained private funding for its other requested expert, Dr. Xenakis, and directed the government to facilitate the access of both experts to Mr. Khadr at JTF-GTMO. (*See* 19 September 2008 Ruling on D-090.) Dr. Porterfield's evaluation of Mr. Khadr is the first step in a "critical path" (which includes subsequent evaluation by Dr. Xenakis and analysis by Dr. Steinberg) that must be completed prior to both trial and the defense's submission of motions to suppress Mr. Khadr's alleged statements to government interrogators. (*See* Def. Mot. for Partial Cont., 19 Aug 2008.)

b. As early as 2004, attorneys acting for Mr. Khadr sought (unsuccessfully) to have him evaluated by an independent psychiatrist and/or psychologist in connection with his detention at Guantanamo Bay. *See O.K. v. Bush*, 344 F.Supp.2d 44 (D.D.C. 2004). Mr. Khadr's counsel in the previous military commission system requested similar expert assistance in 2006. In fact, they requested the assistance of Dr. Xenakis. (Attachment Z to Def. Mot. D-064). Defense counsel in this case requested the appointment of Drs. Porterfield and Xenakis in May of this year. The government has consistently resisted all such efforts. (*See generally* Def. Mot. for Partial Cont., 19 Aug 2008.) It goes without saying that the defense experts would likely have completed their work by now had the government granted the requests for expert assistance in May of this year.

c. Upon receipt of the Military Judge's 19 September 2008 order, the defense promptly notified Dr. Porterfield of her appointment and asked her to indicate when she could travel to GTMO to meet with Mr. Khadr. She indicated that due to professional commitments (including OCONUS travel), she would not be able to come before the week of 13 October 2008.

She also indicated that would need to review a number of documents and records relating to Mr. Khadr before beginning neuropsychological testing and evaluation.¹ Dr. Porterfield indicated that she had been keeping her schedule open for some time, but had finally been compelled to make certain professional commitments that prevented her from traveling to GTMO prior to the week of 13 October 2008. (*See* Decl. of Dr. Katherine Porterfield, 29 Sept 2008 (Attachment A).)

d. On 14 October 2008, Dr. Porterfield met with Mr. Khadr at GTMO in the presence of defense counsel. Mr. Khadr met with her alone on 15 October 2008 in what was primarily, but not exclusively, a “rapport building” visit. Dr. Porterfield plans to return to GTMO the week of 27 October 2008 to resume her evaluation of Mr. Khadr. In light of her schedule and the availability of military flights to and from GTMO, she is unable to return before the week of 27 October 2008.

5. Law and argument: The Military Judge should grant a continuance of the trial date and deadline for submission of evidentiary motions in order to give the defense adequate time to complete discovery and employ the services of experts granted by the Commission and Convening Authority.²

a. It is in the interests of justice to grant a continuance and, consistent with the Military Judge’s order of 19 September 2008, good cause exists to justify doing so. Issuance of the current scheduling order followed an R.M.C. 802 conference, which took place on or about 11 September 2008. The parties appeared to agree that it would be in the interests of judicial economy to conduct a hearing on suppression motions the week before the commencement of trial (so as to avoid having to transport witnesses to GTMO twice) and to fix the date for the submission of defense motions to suppress approximately two weeks prior to the start of the suppression hearing. The current scheduling order, which sets the date for trial at 10 November and the deadline for the submission of suppression motions at 17 October, is consistent with this approach.

¹Dr. Porterfield must examine a number of matters relating to the circumstances of Mr. Khadr’s detention and interrogation in order to complete her evaluation and assist in other matters relating to defense preparation. Obviously, this includes classified documents. The defense is working with the prosecution to expedite the granting of a security clearance for Dr. Porterfield. Alternatively, the prosecution has said that it can seek authorization for Dr. Porterfield to examine classified materials on a case by case basis, but such requests would have to be justified “page by page and line by line.” Moreover, it now appears (based on a document to which the defense obtained access this week) that the government may not yet have disclosed psychiatric records directly related to the work of the defense experts. *See* JTF Memo (Attachment B) (referring specifically to detainee with [REDACTED], which is Mr. Khadr). The defense is currently investigating the matter and working with the prosecution to determine whether these psychiatric records have been withheld. For obvious reasons, the production of such records is crucial to the defense’s ability to employ its experts in connection with defense preparation for trial.

² This Commission’s authority to grant a continuance is clear. MCA § 949e provides that the “military judge . . . may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.” Rule for Military Commission 707 additionally provides for the granting of a continuance in the “interests of justice”

b. As noted above, as set forth in previous defense filings with the Commission, and as recognized by the prosecution (*see* LCDR Kuebler e-mail thread of 3 October 2008 (Attachment C)), the defense experts must complete the critical path before trial and litigation of suppression motions. Dr. Porterfield will not resume her evaluation of Mr. Khadr before the week of 27 October 2008. Whether or not she is able to complete her evaluation that week,³ there is no possibility that she will have time to write a comprehensive report of her findings and deliver it to Dr. Xenakis, that Dr. Xenakis will have time to evaluate Mr. Khadr, prepare a report of his findings and deliver it to Dr. Steinberg, and that Dr. Steinberg will have time to prepare his report and deliver it to the defense prior to the current trial date of 10 November, let alone in time for the 17 October motions deadline (just one day away). The defense is simply unable to file its suppression motions in accordance with the current deadline. Moreover, the 10 November trial date is now patently unrealistic. In light of the logistical issues often cited by the prosecution, it makes no sense whatsoever to continue under the terms of the current scheduling order.

c. Good cause exists to grant the requested relief and the resulting delay is not the fault of the defense. As noted above, lawyers for Mr. Khadr have literally been seeking to get these (or similar) experts to GTMO for years. The defense in this case has been actively working to get its experts approved and sent to GTMO since May. The defense is not suggesting that the prosecution was not within its rights to oppose the defense requests for expert assistance, however, the government must be prepared to accept the natural and probable consequences of its actions in the event its opposition was unsuccessful. To hold otherwise, would be to allow the government to “have its cake and eat it too,” constitute an effective denial of the motion regarding expert assistance that the Commission just granted (D-090), and deny Mr. Khadr his right to a fair trial.

d. Lastly, it bears noting that the defense expert requirements are not the only basis for delay. Discovery is still outstanding (e.g., documents relating to this case that are in the possession of the Canadian government, documents relating to Abu Laith Al Libbi, and documents relating to BSCT operations), and there is at least one critical discovery issue

³ The defense notes that based on its discussions with Dr. Porterfield, there is a possibility that she will have to return to GTMO subsequent to the week of 27 October to complete her evaluation of Mr. Khadr. This is in no way unreasonable. Dr. Emily Keram, who served in a similar capacity for the defense team in the case of *U.S. v. Hamdan*, was permitted eight visits to GTMO and approximately 120 hours with Mr. Hamdan (unlike Mr. Khadr, an adult at the time of his alleged offenses and detention, and whose case lacks many of the issues peculiar to this case resulting from Mr. Khadr’s physical injuries) in order to complete her work in connection with that case. While the defense is not suggesting that mechanistic formula does or should apply to the time Dr. Porterfield should be expected to complete her work in this case, the *Hamdan* case can serve as a rough guide in determining what is reasonable in this case. Moreover, in its 24 September 2008 meeting with the defense, the prosecution took the position that Dr. Porterfield’s hours should be limited to that requested in the original request to the Convening Authority. While the defense does not concede that this is accurate, it is worth noting that the original request to the Convening Authority asked for 100 hours of Dr. Porterfield’s time to be approved. Thus, by the prosecution’s own reckoning, Dr. Porterfield should be permitted time comparable to that afforded to Dr. Keram in order for Dr. Porterfield to complete her work in this case.

(defense access to intelligence interrogators) that must be resolved before the defense will be in a position to litigate suppression motions.⁴ As the defense has previously noted, defense counsel have been served with thousands of pages of additional documents in discovery in this case and have been largely preoccupied litigating discovery, evidentiary, expert, and other motions, and have not had the time to review and digest this material. The defense was permitted access to perhaps the most critical witness in this case (“OC-1”) just last week. In the course of that interview, OC-1 was able to explain to the defense, for the first time since the inception of this case, the significance of certain classified documents provided to the defense in response to defense discovery requests and/or motions. This has prompted defense requests to interview three additional witnesses, which the prosecution is working to facilitate. Moreover, the defense has yet to be afforded access to Jim Taylor, although the defense understands the prosecution is working to provide access to him. As a result, expert issues aside, the discovery process is simply not yet complete and continuing to work under the terms of the current scheduling order virtually guarantees incomplete and/or last minute discovery that will necessarily infringe Mr. Khadr’s right to a fair trial.

e. A continuance is necessary for defense experts to complete their work in connection with this case and for discovery to be completed in a timely fashion. Attorneys representing Mr. Khadr have sought expert psychiatric and psychological assistance in connection with his defense, literally, for years. The government has consistently blocked their efforts. This is a critical step not only in preparation for trial generally, but in litigating the admissibility of Mr. Khadr’s statements to interrogators. Moreover, essential discovery is outstanding. This is through no fault and should not work to the prejudice of the defense. Good cause therefore exists to grant the requested continuance and the interests of justice require it.⁵

6. **Oral Argument:** The defense hereby requests oral argument in the event the Military Commission is not inclined to grant the requested relief on the pleadings.

7. **Witnesses and evidence:** Attachments A through D.

8. **Certificate of conference:** The prosecution opposes the requested relief.

⁴ Additionally, based on information contained in classified discovery provided by the prosecution (i.e., the interrogation plans from JTF-GTMO), the defense intends to seek reconsideration of the Commission’s ruling on D-079 (analyst support packages). Due to logistical constraints on the defense’s ability to file classified matters with the Commission, the defense has not yet been able to submit matters in support of reconsideration, but expects to do so upon defense counsels’ return to Washington, D.C.

⁵ In the event the Military Commission grants the requested relief, the defense does not believe it is necessary to conduct a session of the Commission on 5 November 2008. However, if, the Military Judge disagrees or believes it necessary to conduct a session of the Commission for another purpose, the defense respectfully requests that such session take place no sooner than the week of 10 November. Anticipating that this case would be concluded before now, on 4 May 2008, Assistant Detailed Defense Counsel, Ms. Rebecca Snyder, [REDACTED]

[REDACTED] Obviously, Ms. Snyder is prepared to cancel her trip and absorb the resulting financial loss if trial were to take place in accordance with the current trial schedule. However, if the Military Judge grants the requested relief and there is no apparent urgency in conducting a session during the above-mentioned dates, the defense respectfully requests that Ms. Snyder’s leave plans be taken into account in scheduling the next session of the Commission.

10. **Attachments:**⁶

- A. Decl. of Dr. Katherine Porterfield
- B. JTF Memo
- C. LCDR Kuebler e-mail thread of 3 October 2008
- D. Cancelled deposit check

/s/

William C. Kuebler
LCDR, JAGC, USN
Detailed Defense Counsel

Rebecca S. Snyder
Assistant Detailed Defense Counsel

⁶ The defense is filing this motion from Guantanamo Bay where it does not have access to a scanner. The defense will file the attachments upon return to Washington, DC.

UNITED STATES OF AMERICA

v.

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

D93

GOVERNMENT RESPONSE

To the Defense's Motion for a
Continuance

17 October 2008

1. **Timeliness:** This motion is filed within the timelines established by the Military Judge's 16 October 2008 email.
2. **Relief Requested:** The Defense's request for yet another continuance in this case ("Def. Mot.") should be denied.
3. **Burden and Persuasion:** As the moving party, the Defense bears the burdens of proof and persuasion. *See* Military Commissions Trial Judiciary Rule of Court 3(7)(a).
4. **Facts:** All the facts necessary to deny this motion are already in the record.
5. **Discussion:**

The Interests of Justice Warrant Denial of the Defense Request

a. The Defense's motion is the latest in a long line of Defense demands for delay in this case. The latest request attempts to lay blame on the Government for the Defense's inability to be prepared for trial, notwithstanding the fact that two attorneys have been assigned solely to this case with no other duties for well over a year (LCDR Kuebler since 22 February 2007 and Ms. Snyder since 1 August 2007). The interests of justice for this accused and the public are best served by denying this request and requiring the Defense to proceed to trial as scheduled.

b. Since the inception of this case, the Defense has undertaken extensive efforts to avoid going to trial, and has instead practiced "law by other means," by seeking a political resolution of this case, calling on Canada to request the United States to release the accused.¹ The latest request is a continuation of those efforts. Notably, the Defense hasn't even proposed a new date for submission of a motion to suppress or for the trial. The Defense simply does not want to go to trial and the latest request only reinforces that fact.

¹ The Prosecution has already detailed these Defense efforts at length in the Government Response to D-24. Rather than reiterating its previous brief, the Prosecution incorporates its response to D-24 and respectfully requests the Military Judge consider the arguments contained therein.

c. The main argument from the Defense supporting the latest request for delay is that its experts have not completed psychological and psychiatric testing of the accused that the Defense believes will form the basis for a motion to suppress the accused's statements. The delays caused by the request for the Defense experts are because of the untimeliness of the original Defense request. In its request, the Defense states, "lawyers for Mr. Khadr have literally been seeking these (or similar) experts" for years. The latest Defense effort to re-direct blame for delays in this case toward the Prosecution is spurious. The current Defense Counsel chose not to request expert assistance until over 14 months after being assigned to this case. As the Defense correctly notes, this is after the preceding counsel had requested the very same assistance in the military commission proceeding under the President's Military Order. The matters that were litigated with regard to production of Dr. Porterfield should have been litigated long ago. Of course, waiting to make the request for Dr. Porterfield, knowing that it will lead to delay, is completely consistent with the Defense strategy of delaying this case since current counsel have been assigned.

d. It bears mentioning that the Defense filed the initial motion requesting Dr. Porterfield and Dr. Xenakis on Wednesday, 11 June 2008 at 1640, preceding a week where the parties were scheduled to travel to Guantanamo for a hearing, thereby limiting the amount of time the Prosecution had to address the issue prior to the hearing scheduled for 18 June 2008. This necessitated a request from the Prosecution for an appropriate amount of time to respond. Once the motion was litigated and the Military Judge ruled, the Defense filed their motion to reconsider over three weeks later. The Defense motion to reconsider was filed at 1600 on Thursday, 4 September 2008, again shortly before the parties were scheduled to travel to Guantanamo Bay, again limiting the Prosecution's ability to respond prior to the hearing scheduled the following week. These calculated delays are not the Prosecution's fault and have been necessitated by the timing of Defense filings.

e. Regardless of the timing of the Defense filings, following the 11 September 2008 hearing, the Prosecution recognized that there would be difficulties maintaining the current trial schedule and accommodating the proposed Defense evaluations of the accused absent significant coordination. Again attempting to avoid a delay, the Prosecution arranged for Dr. Porterfield's travel to Guantanamo Bay on 23 September 2008 and conveyed that information to the Defense. The Prosecution does not know whether the Defense informed Dr. Porterfield that there was a flight available to travel to Guantanamo Bay on Tuesday, 23 September 2008. Dr. Porterfield did not travel to Guantanamo Bay until three weeks later on 13 October 2008.

f. Recognizing the past practice of repeated Defense requests for delay in this case, the Prosecution repeatedly requested that the Defense provide a schedule for the so-called "critical path." The Defense chose not to. The Prosecution then sought a conference call pursuant to RMC 802 for the same purpose, recognizing that the subject request from the Defense was inevitable and the longer the Defense delayed the request, the longer the trial could ultimately be delayed.

g. Lieutenant Commander Kuebler's 16 October 2008 email in support of the Defense request for continuance states "the defense cannot control the timing and progress of the defense experts' evaluation of Mr. Khadr." Of course, this is patently false and contrary to practice in courts-martial and Article III courts alike. Experts must conform their schedule to the trial schedule, not the other way around. The Defense request for continuance suggests that Dr. Porterfield can travel to and from Guantanamo Bay indefinitely and at some point *might* complete her work with the accused. The Defense filing and Dr. Porterfield's affidavit provide no explanation why she cannot remain at Guantanamo Bay until her evaluation is complete. Of course, the Defense journey on their "critical path" will then require Dr. Xenakis (and then Dr. Steinberg) to complete their examinations or evaluations of the accused. Such an open-ended trial date is certainly not in the best interest of justice.

h. Additionally, the Defense request mentions in passing that Dr. Porterfield will need to review classified documents before conducting her assessment of the accused. The Prosecution does not concede that it is necessary for Dr. Porterfield to have access to any classified information in this case. Out of an abundance of caution, the Prosecution asked the Defense to identify any classified documents the Defense believes Dr. Porterfield must see and also submit paperwork for a security clearance in the event such access is determined necessary.

i. Notably, the Defense did not notify the Prosecution that the Defense believed access to classified information was necessary until the Prosecution and Defense met on 24 September 2008. The original Defense request to the Convening Authority, the motion to compel production of Dr. Porterfield, and motion to reconsider all failed to mention the need for Dr. Porterfield to have access to classified information. Of course, assuming that such access is necessary, it certainly would have supported the Prosecution argument that appointment of a military clinical psychologist was more appropriate, considering a military psychologist would possess the requisite security clearance to review classified information.

j. As of the date of this filing the Defense has not identified any specific classified information Dr. Porterfield must review in order to complete her work. The only explanation the Defense has provided was during a 24 September meeting where the defense said they *thought* Dr. Porterfield would need DIMS, interrogation reports, and mental health records. This statement was apparently made prior to even consulting with Dr. Porterfield about what she might need. The Defense provided no explanation about why she would need access to the particular information. The Defense did attempt to submit the requisite paperwork on Tuesday, 14 October 2008, however was advised that the application must be completed on-line. As of the date of this filing, the Prosecution does not know whether the request has been re-submitted as this process is handled by someone other than OMC-P.

k. The Defense also cites outstanding discovery as an additional basis for delay. The outstanding discovery matters will be completed in the very near future. The

Prosecution has already reviewed nearly all of the “29 documents” in question that were the basis of the Defense motion, none of which have contained any information relevant to this trial not previously provided to the Defense. The documents are intelligence or law enforcement reports based on statements of the accused (all of which have been previously disclosed to the Defense) and communications between the U.S. and Canada, none of which contain relevant information that the Defense has not seen. (e.g., protocols for travel to and from Guantanamo Bay). The Prosecution expects to have completed this review prior to the next motion session on 22 October 2008.

l. The Prosecution has also spent dozens of hours reviewing thousands of documents in response to searches conducted related to Abu Layth al Libi in response to the Military Judge’s Order on D061. The Prosecution has identified classified documents that are responsive to the Order, however clearly not helpful to the accused. The Prosecution will present a number of these documents to the Military Judge next week *ex parte, in camera* and will provide adequate summaries to the Defense if the Military Judge believes it is necessary. To date, despite reviewing 1,000’s of documents, the Prosecution has not identified one document that states that Abu Layth al Libi was fighting on behalf of LIFG or any other group for purposes unrelated to al Qaeda or that he was doing anything other than conducting attacks against U.S. and coalition forces. As stated in the Prosecution filing on D-061, the two groups had a unity of purpose (to kill U.S. and coalition forces) and operated together in Afghanistan in 2002. The Prosecution will present evidence at trial that many terrorists, including the accused and Abu Layth al Libi, fought on behalf of al Qaeda in Afghanistan but did not swear “bayat” to Osama bin Laden. The Prosecution does not intend to offer any evidence to suggest Abu Layth al Libi or the accused swore Bayat to Usama bin Laden prior to June of 2002.

m. The Defense cannot seriously argue that the Prosecution has been anything but accommodating in arranging interviews with witnesses. The in-person interview with “OC-1” (the Defense specifically requested an interview in person as opposed to over the phone) was originally going to be held in June, however was rescheduled, at least partly due to Ms. Snyder’s Navy Reserve commitments. The interview with [REDACTED] will likely take place the week of 27 October (again in-person at Defense request) and has not been impeded in any way by the Prosecution. The Prosecution notes that the delay caused in arranging this interview was a result of an insufficient request by the Defense provided to [REDACTED]

n. The Defense again complain of insufficient time to digest the “thousands of pages of additional documents” they have been provided in discovery, failing to mention the documents were provided in direct response to their requests. The Defense has had ample time to review the discovery in this case and have been on notice of the Government’s witnesses and evidence since being assigned to the case.

o. The Defense seems just now to be getting around to contacting witnesses in this case. That should not support their request for additional delay. The Defense has had the Prosecution’s witness list since December 2007 with instructions on how to contact any of the Government witnesses. To the extent the Defense chose not to contact

the witnesses until now, that is a trial strategy decision that should have no bearing on the current request.

p. The Defense has continued their efforts to litigate this case in the media and seek a political resolution to this case. The Defense made a strategic choice to spend a considerable amount of their time undertaking these efforts while also preparing for trial. The Military Judge should not assist the Defense in their trial avoidance strategy. The current trial date should be maintained. With a firm date, all parties will know what needs to be done in the final weeks leading to trial, and the parties can, should and will be prepared on that date.

q. The interests of justice demand denial of this motion.

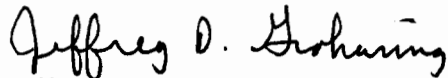
6. Oral Argument: The Government does not request oral argument.

7. Witnesses and Evidence: All of the evidence and testimony necessary to deny this motion is already in the record.

8. Certificate of Conference: Not applicable.

9. Additional Information: None.

10. Submitted by:



Jeffrey D. Groharing
Major, U.S. Marine Corps
Prosecutor

Keith A. Petty
Captain, U.S. Army
Assistant Prosecutor

John F. Murphy
Assistant Prosecutor
Assistant U.S. Attorney

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v.)
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OMAR AHMED KHADR)
a/k/a "Akhbar Farhad")
a/k/a "Akhbar Farnad")
a/k/a "Ahmed Muhammed Khali")

RULING
Defense Motion
For a Continuance
D093

1. The Defense requests the Commission to grant an indefinite continuance in these proceedings. The Government opposes this motion.
2. The Defense has not provided an adequate factual or legal basis for an indefinite continuance. The Defense has had a substantial period of time to prepare for this case. Accordingly, the Defense motion for an indefinite continuance is denied. The Commission finds and orders as follows:
 - a. The Defense has sufficient information in order to file a motion to suppress any statements by the accused in accordance with Military Commission Rules of Evidence (MCRE) 304. The Defense will file any such motion no later than 7 November 2008. The Government will file any response no later than two weeks after the Defense brief is filed.
 - b. If necessary, the Defense may be required to file more specific grounds for any motion to suppress in accordance with MCRE 304(d)(3). The Commission notes that under MCRE 304(e), once the Defense files a motion to suppress, the prosecution has the burden of establishing the admissibility of the evidence. The Commission interprets that provision to require the Government to call witnesses or present some evidence to meet its burden without the requirement of the Defense to first present matters on the admissibility of any of the accused's statements in light of MCRE 304(f).
 - c. Counsel will provide the Commission any proposed voir dire questions to the panel members no later than 3 weeks prior to the start of the suppression motion.
 - d. Counsel will provide the Commission proposed findings instructions and potential sentencing instructions no later than 3 weeks prior to the start of the suppression motion. The Commission will provide counsel with a copy of the opposing counsel's proposed instructions after they have been filed with the Commission.
 - e. The Government will provide Dr. Porterfield with the correct web site no later than 31 October 2008 in order for her to provide the appropriate information for a background check in order to obtain an appropriate security clearance. Dr. Porterfield will fill out the appropriate web based forms no later than 7 calendar days after being provided the

correct web site. If Dr. Porterfield fails to meet this deadline, the Commission may find that the Defense has waived the opportunity for Dr. Porterfield to have access to any classified material, assuming without deciding, that such access is necessary for an adequate evaluation.

f. As discussed at the hearing on 22 October 2008, the Defense has already submitted a list of witnesses to the Government which it requests the Government to produce. The Commission is not ruling on the production of any of those witnesses as that issue is not yet properly before the Commission. The Defense will provide the Government with a list of any additional witnesses it is requesting the Government to produce no later than 7 November 2008.

3. The hearing dates and trial dates are as follows:

a. The suppression motion will begin on 19 January 2009.

b. The trial will begin on 26 January 2009.

c. Counsel for either side may request additional hearings, but must do so in a written request no later than 14 November 2008.

4. This ruling supersedes the scheduling order dated 15 September 2008.

So Ordered this 23rd day of October 2008.



Patrick J. Barrish
COL, JA
Military Judge

